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SUPREME COURT, U.S.

No. 98-184

In The

Supreme Court of the United States

October Term, 1998

THE STATE OF WYOMING,

Petitioner,

vs.

SANDRA HOUGHTON,

Respondent.

On Writ Of Certiorari
To The Wyoming Supreme Court

JOINT APPENDIX

WILLIAM U. HILL
Attorney General of Wyoming

PAUL S. REHUREK*
Deputy Attorney General

D. MICHAEL PAULING
Senior Assistant Attorney General

123 Capitol Building
Cheyenne, Wyoming 82002
Telephone: (307) 777-7841

Counsel for Petitioner

*Counsel of Record

SYLVIA LEE HACKL*
Wyoming Public Defender

DONNA D. DOMONKOS
Appellate Counsel

T. ALAN ELROD
Assistant Appellate Counsel

2020 Carey Avenue
Third Floor
Cheyenne, Wyoming 82002
Telephone: (307) 777-7137

Counsel for Respondent

*Counsel of Record

Petition For Certiorari Filed July 27, 1998
Certiorari Granted September 29, 1998

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IN THE STATE OF WYOMING)
) SS.
COUNTY OF NATRONA)

COUNTY OF NATRONA

NATRONA COUNTY COURT
Case No.
DA No.
Docket No.

IN THE DISTRICT COURT
SEVENTH JUDICIAL DISTRICT
CRIMINAL ACTION NO. 12880

THE STATE OF WYOMING,)
Plaintiff,)
vs.)
SANDRA HOUGHTON,)
Defendant.)

INFORMATION

(Filed Aug. 14, 1995)

COMES NOW John A. Masterson, Assistant District Attorney, Seventh Judicial District, State of Wyoming, and in the name and by the authority of the State of Wyoming, informs the Court and gives the Court to understand that SANDRA HOUGHTON, late of the County aforesaid, on or about the 23rd day of July, 1995, in the County of Natrona, in the State of Wyoming, did unlawfully

and knowingly obstruct impede, or interfere, with a peace officer, namely Delane Baldwin, of the Wyoming

Highway Patrol, who was engaged in the lawful performance of his official duties, in violation of W.S. 1977, as revised § 6-5-204(a).

COUNT II

That SANDRA HOUGHTON on or about the 23rd day of July, 1995, in the County of Natrona, in the State of Wyoming, did unlawfully possess a controlled substance, namely: Methamphetamine, Schedule II, W.S. 1977, as revised, § 35-7-1016(d), and in a liquid amount greater than three three-tenths (0.3) of a gram, in violation of W.S. 1977, as amended, § 35-7-1031(c)(iii).

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Wyoming.

DATED this 24th day of July, 1995.

/s/ John A. Masterson
John A. Masterson,
Assistant District Attorney
Seventh Judicial District
County of Natrona
State of Wyoming

Defendant pleads NG

Dated this 29th day of Aug., 1995.

Bond – 1500 c/s.

STATE OF WYOMING)
) SS.
COUNTY OF NATRONA)

I, Sue Pate, Clerk of the District Court within and for the County and State aforesaid, do hereby certify that the

within and foregoing is a true and correct copy of the original information filed, and appears of record in my office.

SUE PATE, Clerk of District Court

By: _____
Deputy

THE STATE OF WYOMING)
) SS.
COUNTY OF NATRONA)

SHERIFF'S RETURN

I hereby certify that received the within Information on the ___ day of _____, 1995, at the hour of ___ o'clock, ___.M. and I served the same at the County and State aforesaid, by delivering a certified copy of the original information to the within named _____ with all the endorsements thereon, the ___ day of _____, 1995, at the hour of _____ o'clock, ___.M.

DAVE DOVALA, SHERIFF
OF NATRONA COUNTY

By: _____
Deputy

ARRAIGNMENT, WHEN DEFENDANT APPEARS WITH COUNSEL

Defendant, being present in person, and by counsel, Monica Sharum, and after hearing (✓) the substance of the charge explained ((the Information read) entered

her plea of not guilty as charged, this 29th day of Aug., 1995.

SUE PATE, Clerk of District Court

By: /s/ Sue Pate
~~Deputy~~

CONDITIONS OF BOND

Cont'd

ARRAIGNMENT, WHEN DEFENDANT CHANGES PLEA

Defendant, appearing in person, and by counsel, _____ withdrew his plea of _____ and enters his plea of _____ this ___ day of ___, 1995.

SUE PATE, Clerk of District Court

By: /s/ _____
Deputy

CONDITIONS OF BOND

_____

ARRAIGNMENT, WHEN DEFENDANT APPEARS WITHOUT COUNSEL

Defendant, appearing in person, without counsel, after having been advised by the Court of the seriousness of the crime charged in the Information and of (his)(her) right to have counsel appointed by the Court, if Defendant desires counsel and was without funds to employ one, and having been advised of the Defendant's right to

trial by jury, if so desire, and Defendant having stated that neither counsel nor trial by jury was desire, and after hearing ( ) (the substance of the charge explained) ( ) (the information read) entered ____ plea of ____ _____ as charged, this ___ day of ___, 1995.

SUE PATE, Clerk of District Court

By: /s/ _____
Deputy

STATE OF WYOMING)
) §
COUNTY OF NATRONA)

IN THE COUNTY COURT OF
NATRONA COUNTY
Case No. 12880

THE STATE OF WYOMING,)
PLAINTIFF,)
VS.) Docket no.
/s/ Sandra Houghton) CR-9507-0266
DEFENDANT.)

ORDER APPOINTING COUNSEL AND REQUIRING PERIODIC PAYMENTS

(Filed Aug. 14, 1995)

The defendant above named having requested a Court appointed counsel, and the Court having inquired of him under oath regarding his financial abilities;

The Court finds and concludes:

1. The Defendant is charged with a serious crime and is not currently represented by an attorney in this matter.

2. The Defendant is presently unable to provide for full payment of attorney's fees and other expenses of representation, W.S. Section 7-6-106(c) and therefore qualifies for the services of a Court appointed attorney.

3. The Defendant can afford to pay the sum ordered herein to partially defray the costs of representation, Section 7-6-106(c).

NOW THEREFORE, IT IS HEREBY ORDERED:

1. That the Public Defender, Attorney at Law is appointed to represent the defendant above named.

2. That the defendant shall pay to the Clerk of the County Court the sum of $to be set per month, beginning _____ and continuing each month thereafter until further Order of the this and/or District Court. (Failure to make these payments may result in punishment for contempt.)

3. That the Defendant shall immediately report to the Court anything that would change any answer on the accached affidavit.

DATED this 31st day of July, 1995.

BY THE COURT:

/s/ David Park

CERTIFICATE OF SERVICE

I, Debbie May, hereby certify that a copy of this Order was served upon the Defendant by mailing a copy to the mailing address given to the Court by the Defendant; that a copy has been delivered through the regular course of business to the Public Defender's office this 31 day of July, 1995.

/s/ Debbie May
Clerk

STATE OF WYOMING)
) SS
COUNTY OF NATRONA)

IN THE COUNTY COURT
NATRONA COUNTY, WYOMING
Criminal Docket
No. CR-9507-0266
CR-9507-0267

STATE OF WYOMING,
Plaintiff,
vs.
Sandra Kay Houghton
Defendant.

ORDER

(Filed Aug. 14, 1995)

The PRELIMINARY HEARING in the above entitled matter having come on regularly for hearing and there appearing John Masterson County Attorney for the State of Wyoming and Monica Sharum Attorney for the defendant Sandra Kay Houghton and the Court being fully advised in the premises finds that defendant waived preliminary hearing before Judge David B. Park

NOW THEREFORE it is ORDERED that the Defendant be and he hereby is bound over to the District Court for the 7th Judicial District, Casper, Natrona County, Wyoming to

appear therein _____ to answer said charge in the within complaint and not to depart therefrom except upon order of the said District Court; and it is further ORDERED that pending Defendant's appearance in and further order by the District Court his bond heretofor made in this court be and the same hereby is continued pending appearance in the district court.

DONE IN OPEN COURT this 11th day of August 1995.

/s/ David B. Park
COUNTY JUDGE/
COMMISSIONER

IN THE DISTRICT COURT OF NATRONA, WYOMING
SEVENTH DISTRICT OF WYOMING
CRIMINAL ACTION NO. 12880

THE STATE OF WYOMING,
PLAINTIFF,
VS.
SANDRA HOUGHTON,
DEFENDANT.

MOTION TO SUPPRESS ITEMS
DERIVED FROM ILLEGAL SEARCH
(Filed Sep. 05, 1995)

COMES NOW the Defendant, by and through her attorney, Monica A. Sharum, and pursuant to Rule 12 WRCrP, the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution, Article I Sections 4 and 6 of the Wyoming Constitution, and the Wyoming Rules of Evidence and moves the Court to Order a Suppression of all evidence obtained from stop of vehicle on July 23, 1995.

1. That on July 23, 1995 a said above mention car was stopped.

2. A search of the above car was then conducted without a warrant.

3. A search of all containers in said car was then conducted.

4. No consent was given for the search.

WHEREFORE THE DEFENDANT PRAYS:

1. That the Court Order a Suppression of all evidence from stop of vehicle on July 23, 1995.

2. For such other relief as the Court deems proper.

DATED this 5 day of September, 1995.

/s/ Monica A. Sharum
MONICA A. SHARUM

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Motion was served upon the attorney for the State of Wyoming this 5 day of ~~June~~ September, 1995.

/s/ Monica A. Sharum
MONICA A. SHARUM

STATE OF WYOMING)
) ss.
COUNTY OF NATRONA)

IN THE DISTRICT COURT
SEVENTH JUDICIAL DISTRICT
Criminal Action No. 12880

THE STATE OF WYOMING,)
Plaintiff,)
v.)
SANDRA HOUGHTON,)
Defendant.)

MOTION TO SUPPRESS

(Filed Oct. 17, 1995)

The above-entitled matter came on for hearing on MOTION TO SUPPRESS before the HONORABLE DAN SPANGLER, a Judge of the Seventh Judicial District of Wyoming, in the District Courtroom, Natrona County Courthouse, Casper, Natrona County, Wyoming, at the hour of 10:05 a.m., on the 27TH of SEPTEMBER, 1995.

APPEARANCES

For the State:
JOHN MASTERSON,
Casper, Wyoming,
Assistant District Attorney.

For the Defendant:
MONICA SHARUM,
Casper, Wyoming,
Assistant Public Defender.

The defendant also appeared in person.

[p. 2] WEDNESDAY, SEPTEMBER 27, 1995, MORNING SESSION, 10:05 a.m.

PROCEEDINGS

THE COURT: The Court will come to order in the case of the State of Wyoming versus Sandra Houghton, Criminal Action No. 12880. I believe we're here on your motion, Ms. Sharum.

MS. SHARUM: Yes, sir. Your Honor, we're here on a Motion to Suppress the evidence found in a warrantless search of a car on July 23, 1995.

THE COURT: Which side wishes to proceed first?

MR. MASTERSON: Your Honor, the State will present evidence, in the form of testimony, from the highway patrolman involved in the stop. And with that in mind, we would call Delane Baldwin.

DELANE BALDWIN,

having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MASTERSON:

Q Sir, would you tell your name and occupation, please.

A Delane Baldwin, and I'm with the Wyoming Highway Patrol.

Q And were you working in that capacity on July 23, of this year?

[p. 3] A Yes, I was.

Q During the early morning hours of that day, you had the occasion to stop a vehicle; is that correct?

A Yes, I did.

Q And that vehicle contained the defendant in this case; is that correct?

A That's correct.

Q Was she driving that vehicle?

A No, she was not.

Q And where was she sitting when you stopped that vehicle?

A She was in the passenger seat of the vehicle. David Young was the driver of the vehicle.

Q What was the reason for that stop?

A The vehicle was speeding. Some of the lights on the vehicle did not work.

Q And approximately where – excuse me. Where did you stop the vehicle?

A I observed the vehicle on the interstate, and I stopped it at the Evansville Mini Mart.

Q And that's located in Natrona County?

A Yes, it is.

Q When you contacted the driver of that vehicle, Mr. Young, did you notice anything about [p. 4] him?

A I spoke with him. And during our conversation, I noticed a small syringe in his – in his shirt pocket.

Q And what is the relevance of that, in your occupation?

A Syringes are commonly used for talking drugs, illegal drugs.

Q Was Mr. Young still seated in the vehicle when you saw that?

A Yes, he was.

Q Did you ask him about that?

A Yes, I did.

Q And what did he tell you?

A He took the syringe out and set it on the vehicle. And I asked him what the syringe was for, and he told me that he used it to take drugs.

Q What did you do then?

A I had all the people in the vehicle exit, and I padded them all down, to see if there were any weapons or anything. And then I did a search on the vehicle.

Q How many people were in the vehicle?

A I believe there were three.

Q And specifically, with regards to the [p. 5] defendant in this case, what did you find?

A Well, the defendant gave a fictitious name. And when we were checking some information to see if they were wanted, we didn't get anything back on her.

And during my search, I found a large purse that contained three other smaller wallet-type containers. And in one of them, I found a driver's license that identified the defendant. And then also there were two other bags in there, and both of those containers contained the illegal drugs that I arrested her for.

Q Where was that purse located?

A Okay. It was on the – I believe it was on the floorboard of the car.

Q On the passenger or driver's side – or perhaps I could ask it this way. Was it at the feet of the defendant?

A To the best of my recollection, it was in the back seat, where the defendant was.

Q And the defendant was riding in the back of the car?

A Yes, I believe so.

Q And up until the time you found the identification in that purse, you didn't know the [p. 6] identity of the defendant?

A That's correct.

Q But she had given you a name that turned out to be false?

A That's correct.

Q Did the defendant ever claim that purse was hers?

A Yes. She said the purse was hers. The wallet containing her driver's license was hers. There were two separate containers, containing drugs and paraphernalia. There was one containing a syringe that had a smaller amount in it. She said that was hers. And then, there was a third container that contained more, and she said that that was not hers.

Q Did you ask the driver, Mr. Young, or any of the occupants for their consent to search the vehicle?

A No, I did not.

Q Did any of the occupants of the vehicle object to your search?

A No, they did not.

Q Was any other drug paraphernalia found in that vehicle?

A Well, there was a large quantity of, of [p. 7] chemistry lab equipment found in the trunk. And I could not link it to any direct drug activity.

Q But your search was based on Mr. Young's possession of that syringe, and his indication that he used it to consume drugs?

A That's correct.

A MR. MASTERSON: That's all the questions I have of the patrolman, thank you.

CROSS-EXAMINATION

BY MS. SHARUM:

Q Mr. Young was driving the car, correct?

A Yes.

Q And the syringe you saw was on Mr. Young's person?

A Correct.

Q And Mr. Young stated that he was the one that used drugs?

A Correct.

Q Okay. Where did you say my client was located in the car?

A She was in the back seat, I believe, on the passenger side. But I didn't put it in my report. But to the best of my knowledge, it was the passenger side.

Q Okay. Now, when you saw the – when you saw [p. 8] the syringe, you felt that gave you probable cause to search, because Mr. Young had stated he used drugs with the syringe, correct?

A Correct.

Q You at no time saw Ms. Houghton with anything that would have given you probable cause to believe that she was using drugs, correct?

A What time frame are we speaking of?

Q I'm talking about prior to the search?

A That's correct.

Q Generally speaking, men do not carry purses, correct?

A No, they don't.

Q Okay. Isn't it true that while you were searching the car, Ms. Houston asked you if you needed a warrant to do this?

A I did not speak with her until I called her over, after finding her purse. I did not speak to her personally.

Q Did you ever ask her for consent to search her items, her purse?

A No, I did not.

Q Did you ask anybody for consent to search?

A No, I did not.

Q How many people were in the car again?

[p. 9] A Three.

Q And David Young was the driver. Who was the other passenger?

A Vanessa McQueary. And Sandra Jones is the name she gave first.

Q Which you later found out was Sandra Houghton?

A Correct.

Q Were any of these other people arrested on that evening?

A No, they were not.

Q Have they been arrested on this incident?

A No, they have not.

Q Okay.

MS. SHARUM: I have no further questions at this time.

MR. MASTERSON: I have no other questions of the patrolman, Your Honor. Thank you.

THE COURT: Okay.

THE WITNESS: Thank you, Your Honor.

THE COURT: Do you have any other witnesses, Mr. Masterson?

MR. MASTERSON: No, Your Honor, I do not. Thank you.

THE COURT: Ms. Sharum?

[p. 10] MS. SHARUM: The defense could call Sandra Houghton, for the limited purpose of protecting her Forth Amendment Rights, Your Honor.

SANDRA HOUGHTON,

having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. SHARUM:

Q Would you state your name for the record. And spell your last name.

A Sandra K. Houghton, H-O-U-G-H-T-O-N.

Q And where do you live, Ms. Houghton?

A In Mountainview, at 545-B West First.

Q Okay. Thinking back to the evening of July 23, 1995, did you have occasion to be stopped by a patrol officer?

A Yes, I did.

Q Okay. And while that stop occurred, was there a search conducted of the car that you were in?

A Yes, there was.

Q Okay. Did you speak with the patrol officer at any time, concerning that search?

A Yes, I did.

Q What was the nature of that conversation?

A I just asked him if he wasn't supposed to [p. 11] have a warrant to search closed purses.

Q Did you ever give him a consent to search?

A No, I did not.

Q Okay.

MS. SHARUM: I have no further questions, Your Honor.

MR. MASTERSON: No questions of the defendant, Your Honor.

THE WITNESS: Could I add something? I was not sitting in the back seat. I was sitting in the front seat, next to the passenger door.

MS. SHARUM: Okay. Your Honor, I have a brief closing statement, Your Honor.

Your Honor, this officer pulled over a car for speeding and for some light violations – for some lights being out on the tail. I think the taillights were out, I believe, according to the affidavit.

That was legitimate. He saw probable cause to search Dave Young. He never had probable cause to search my client. He should have asked her for her consent to search her belongings, and he needed probable cause to search her and her items.

He had probable cause to search Dave Young, not my client, Your Honor. And I would ask that [p. 12] this be suppressed.

MR. MASTERSON: Your Honor, automobiles carry with them a profoundly reduced expectation of privacy, as recognized by the Wyoming Supreme Court and the U.S. Supreme Court.

The officer does a perfectly proper traffic stop. He gains probable cause to search that vehicle, when the driver, in plain view, has drug paraphernalia on him, which he indicates was used for the consumption of drugs. He has probable cause at that point, we believe, to search that vehicle.

And also under *California v. Aceveda* and *Florida v. Jimeno*, he has the right to search any closed containers, within that vehicle, which may reasonably contain the contraband he was looking for.

We think he had probable cause to stop. He had probable cause to search. And under the established case law, he has probable cause to search the closed containers. Thank you.

THE COURT: What are the cites in those cases, Mr. Masterson?

MR. MASTERSON: *California v. Aceveda*, Your Honor, is 111 S.Ct. 1982. It is a 1991 case. And *Florida v. Jimeno* is 111 S.Ct. 1801, also in [p. 13] 1991.

THE COURT: I'll take the motion under consideration and send a decision letter out to both sides.

MS. SHARUM: Thank you, Your Honor.

MR. MASTERSON: Thank you, Your Honor.

(Proceedings concluded at 10:19 a.m.)

[p. 14] STATE OF WYOMING)
) ss.
COUNTY OF NATRONA)

CERTIFICATE

I, Sara C. McDowell, an Official Court Reporter of the Seventh Judicial District of Wyoming, do hereby certify that the foregoing constitutes a full, true, complete, and correct transcript of the proceedings in the above-numbered and entitled cause.

Dated this 17TH day of OCTOBER, 1995.

/s/ Sara C. McDowell
Sara C. McDowell,
Official Court Reporter

ORIGINAL

The State of Wyoming
Seventh Judicial District

DAN SPANGLER, JUDGE
SARA CHARBONNEAU, REPORTER

NATRONA COUNTY
COURTHOUSE, ROOM 214
200 NORTH
CENTER STREET
CASPER, WYOMING 82601
PHONE (307) 235-9253

October 3, 1995

Mr. John A. Masterson
Asst. District Attorney
200 North Center Street
Room 300
Casper, Wyoming 82601

Ms. Monica Sharum
Asst. Public Defender
120 West First Street
Casper, Wyoming 82601

Re: State v. Sandra Houghton
Criminal Action No. 12880

DECISION LETTER

(Filed Oct. 02, 1995)

Dear Ms. Sharum and Mr. Masterson:

The above matter has come before the Court upon Defendant's motion to suppress. The officer had probable cause to search the vehicle based upon his observations and what he was told by the driver. A warrantless search of an automobile based upon probable cause does not violate the Fourth Amendment. *U.S. v. Arzaga*, 9 F.2d 95 (10th Cir. 1993). The officer was justified in searching the

purse as well. If the officer has probable cause to believe that there is contraband somewhere in the car, but does not know exactly where, he may search the entire car as well as any containers. *California v. Aceveda*, 114 L.Ed.2d 619 (1991). Thus, it was legal for the officer to search the purse and to seize the contraband.

Mr. Masterson is requested to prepare an order denying the motion for approval as to form by Ms. Sharum.

Sincerely,

/s/ Dan Spangler
Dan Spangler

IN THE DISTRICT COURT
SEVENTH JUDICIAL DISTRICT
Criminal Action No. 12880

STATE OF WYOMING)
COUNTY OF NATRONA) ss
)

THE STATE OF WYOMING,)
PLAINTIFF,)
)
VS.)
SANDRA HOUGHTON,)
)
DEFENDANT.)

MOTION TO SUPPRESS

(Filed Oct. 17, 1995)

COMES NOW, Sandra Houghton, Defendant herein, by and through his court appointed attorney, Monica Sharum, Assistant Public Defender, and respectfully moves this Court for its Order suppressing any and all statement made by the defendant on August 1, 1995.

This Motion is based on statement made on August 1, 1995 were made after Judge Dave Park sign order appointing counsel, (singed July 31, 1995), but counsel was not present for the questioning of Sandra Houghton.

DATED this 17 day of October, 1995.

/s/ Monica A. Sharum
MONICA SHARUM
Assistant Public Defender

CERTIFICATE OF SERVICE

I, Monica Sharum, counsel for the Defendant herein, does hereby certify that a true and correct copy of the foregoing MOTION TO SUPPRESS has been delivered to the attorney for the State of Wyoming by delivering the same to the office of the District Attorney this 17 day of October, 1995.

/s/ Monica A. Sharum
MONICA SHARUM

IN THE SEVENTH JUDICIAL DISTRICT COURT
FOR THE STATE OF WYOMING

STATE OF WYOMING, Plaintiff, vs. SANDRA HOUGHTON, Defendant.	)	Criminal Case No. 12880

TRANSCRIPT OF MOTIONS HEARINGS
(Filed Jun. 3, 1996)

BE IT REMEMBERED that the above-entitled matter came on before the Hon. W. Thomas Sullins District Court Judge of the Seventh Judicial District at the Natrona County Courthouse at Casper, Wyoming, on October 18, 1995 and November 1, 1995.

APPEARANCES:

For the State: MICHAEL BLONIGEN
Assistant District Attorney
Natrona County Courthouse
Casper, Wyoming 82601

For the Defendant: MONICA SHARUM
Deputy Public Defender
120 W. First, Suite 320
Casper, Wyoming 82601

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(State of Wyoming versus Sandra Houghton)

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[p. 2] **OCTOBER 18, 1995**

THE COURT: State versus Houghton.

MS. SHARUM: Your Honor, I have a motion to Continue, Motion to Suppress, and a Motion in Limine.

MR. BLONIGEN: Your Honor, we would like to defer to the Motion to Continue first, Your Honor.

THE COURT: That would be fine.

Why don't you proceed in whatever order you want. Start out with the motion to continue.

MS. SHARUM: That is based on two items. At the time I filed this motion, I had not received the State Crime Lab results. I filed this yesterday at approximately 11:30. By the time I came back from lunch, I had a copy of the State Crime Lab results faxed to me.

The other basis for the Motion to Suppress is that I have not had an opportunity to inspect the physical evidence. I have called the Highway [p. 3] Patrol. I have been told that the physical evidence is not there, that it is

at the State Crime Lab and they do not know when they will have it back.

MR. BLONIGEN: Your Honor, whoever she talked to was misinformed. It has been sent back.

Secondly, Your Honor, there is an error in our traverse. They were faxed on the 17th, not the 11th.

Your Honor, all these essential items other than the controlled substance itself and syringes contained have been present at the Highway Patrol since the date of the arrest. Specifically the items Mrs. Sharum was asking me about the other day, the person, identification and items, were never sent to the Lab. The syringes containing the suspected substance were sent to the Lab.

In short, Your Honor, the items are available for review. If necessary, I will make whatever phone calls I need to for that purpose.

[p. 4] Secondly, the lab results have been obtained and forwarded. They were forwarded on a Tuesday, I believe, as soon as we had possession of that report ourselves.

As I indicated, the other items Mrs. Sharum was concerned about when she talked to me were the personal other items that would identify this person as belonging to her client and have been present the whole time, so believe that we are ready to go to trial on Monday.

I would note, Your Honor, also that her client is not here at this time. We'll discuss that prior to the other motions, but in summary, we believe that there is no reason to continue this trial. Those items will be available

as the rule requires prior trial for review, and we have, in any event, obtained the lab results that she had requested.

THE COURT: The case does involve the controlled substance that was tested [p. 5] and the result were just made available within the past couple of days, is that correct?

MR. BLONIGEN: Yes, it would have been Tuesday.

MS. SHARUM: I don't know what time it was faxed but when I came back from lunch at 1:00, they were there.

THE COURT: Were the results available earlier or were they just delayed?

MR. BLONIGEN: What happened, sir, was they mailed them. It was completed the 12th, mailed to the Police Department, and it would have arrived there for reprocessing back in to evidence probably on Friday, that Friday afternoon. We looked for them and found out that they were aware of them. This went to Patrol which is not as familiar with these procedures. We specifically got ahold of the Patrol and told them to immediately bring these in and we did provide those in a very timely fashion. We called them about 11:00 and they said they were [p. 6] available and we went ahead and faxed a copy to there office on Tuesday morning.

THE COURT: I guess what I'm getting at is the delay was out of Cheyenne or wherever the testing was done?

MR. BLONIGEN: Your Honor, point in fact, very simply backlog. We sent these things in right away. That wasn't the problem. Their caseload has gone to the point out of Natrona County that a large majority percentage of all their drug cases are out of this County. I had seven on this trial stack out of Natrona County including items sent as early as July 11th that I had to request that the results be hurried up or that they be given a new priority. That is the nature of the backlog that we see at this time.

THE COURT: Miss Sharum, a question I would have for you. Had you made a request for an actual look at the other physical evidence or whatever the Highway Patrol had in its possession [p. 7] earlier?

MS. SHARUM: I made the initial request, I called the Highway Patrol initially on Tuesday to find out that they were not there and had they been there, I would have seen them Tuesday. I asked them when they would have it back. Perhaps there was a miscommunication. My indication was that they had nothing there, that everything was in the State Crime Lab. Perhaps there is a miscommunication between them and the Highway Patrol, but my understanding was that there would not be anything there until approximately Monday.

MR. BLONIGEN: That would surprise me, Your Honor, because they usually mail the report back with the items, and if you look at the top, it was delivered certified mail and everything, they returned the items as soon as possible. I asked the gentleman, Mr. Angelos, have you sent these items back and he said, yes, I send them back

with my report. So it appears that they should [p. 8] be back.

I can contact the Highway Patrol. The difficulty that sometimes arises, each of the officers out there is responsibile for maintaining their own evidence, and so it is not uncommon for other individuals there not to be fully aware of what is going on. I can call Sergeant Martin as soon as I get done here, as far as that goes, to have those items made available.

In any event, Your Honor, as I say, the items, I first had a request from Miss Sharum to look at the items, I think, Monday afternoon and had told her that the items, the purse and things were here, but the drugs were probably in Cheyenne, and that is when we found out that they had been shipped out. Those items, other than the syringes and the suspected methamphetamine have been here since the date of arrest on July 23.

THE COURT: Okay, thank you.

I'm going to rule that a [p. 9] continuance can be granted in this case. I think there has been some communication and miscommunication. The bottom line is see that we have a serious criminal offense scheduled to go to trial on Monday and that the time frame within which the results have been made available and the time remaining to work out these other problems is very short and I would hope that we can avoid this in the future, but I know that very often with the caseloads both sides are carrying, you are going to be looking at a very similar type situation; but I would hope that the results could be made available at an earlier date. All things considered, I am willing to grant the continuance on to the next stack.

MS. SHARUM: Thank you, Your Honor.

MR. BLONIGEN: Your Honor, if I may then, prior to the Court's ruling, I think previously that you made granting the continuance, I think this is [p. 10] particularly appropriate. We were notified this morning and served at approximately 10:30 this morning with a motion to suppress the statements. Rule 45 provides that motions, unless otherwise directed, should be served on the party at least five days prior to hearing, not five hours.

Secondly, I believe that Miss Sharum's client is not here today. That always gives me concern in any kind of motion, but a suppression motion particularly. That is a very crucial motion and I don't think it would be appropriate, Your Honor. I think this Court should reschedule this. We have some – we are researching the problem ourselves, but given the – the Defendant has no phone so short notice is difficult.

We believe we don't have the five day notice. The Court has already continued the case. In light of that, I think we should reschedule this suppression motion until she is [p. 11] present.

MS. SHARUM: We have no objection to that, Your Honor. I agree on short notice and since we do have the time. Miss Sharum, I also think that as a condition of whatever bond may be involved here, your client should appear in all proceedings unless excused or unless we are talking about a purely administrative, administerial type hearing before the Court. Without a telephone, I don't know how you would do any better than you did.

MS. SHARUM: I did try to contact both of her sisters and was unable to reach either one of them. Apparently both of her sisters' phones had been disconnected, which was always my best way of getting in contact with her on short notice.

I want my clients here for all proceedings and I try to make them be here even for administrative meetings.

THE COURT: Well, I think we have an understanding.

[p. 12] The motion to suppress should be rescheduled and perhaps the Court can make a note that we'll need to put that on the calendar for a hearing.

THE COURT: Okay.

Anything else on the Houghton case?

MR. BLONIGEN: I don't believe so, Your Honor.

I take it this will be set over to the trial stack on November 6, is that correct? That is the next trial stack.

THE COURT: I believe that is correct. Is that okay, Mrs. Sharum?

MS. SHARUM: That is acceptable.

THE COURT: I would ask you, Miss Sharum, to prepare an order reflecting that your motion for a continuance was granted and present that to me.

MS. SHARUM: Thank you, Your Honor.

(Whereupon the proceedings adjourned.)

[p. 13] **NOVEMBER 1, 1995**

THE COURT: State versus Sandra Houghton, criminal action number 12880.

This has been set for suppression hearing, is that correct Miss Sharum?

MS. SHARUM: Yes, Your Honor.

THE COURT: With respect to the suppression matter itself, either party desire any opening statements?

MR. BLONIGEN: Your Honor, I believe that the burden false largely upon the State in these cases given that we must show an appropriate and voluntary waiver. I think you will find, Your Honor, as you go through this that the parties really stipulate to many of the basic facts. There are some disputes, but the basics are not really in doubt.

I think the timeline is important, Your Honor. On July 23, 1995, Miss Houghton was arrested, charged with felon in possession of methamphetamine. She made some statements prior to her arrest. Those [p. 14] are not in issue here, but she was never further interviewed, nor was there any implication of a right to remain silent, or a right to counsel.

On July 24, 1995, the Defendant appeared in County Court on an initial appearance. The Court asked her if she wanted a pauperis, to apply for counsel and she said that she did. For purposes of this hearing, Your Honor, we are going to agree that that would constitute a request for counsel. I am not sure it really did, but for purposes of this hearing, the State is not contesting that.

On July 26, 1995, the parties stipulate, Miss Houghton, who remained incarcerated, made a request which is contained in a document we have subpoened from the Natrona County Jail records indicating that for the past two days she had been attempting to talk to Sergeant Bergen of the Police Department without success and would again like to see him. That is [p. 15] approximately two days after this initial appearance and refers to previous requests during that period of time.

On July 31, 1995, the Defendant appeared for preliminary hearing. She was informed counsel had been appointed from the Public Defender's Office and that her pauperis had been approved that day, that is July 31, 1995.

On July 31, 1995, the Defendant also requested a bond reduction in a pro se capacity. That Motion was denied.

On August 1, 1995 – and I believe the evidence will show and I do not know if the parties will stipulate – DCI interviewed Miss Houghton. As you'll hear Agent Peters testify, the main concern at that time was not an interview about the offense she had been arrested for the day before but an attempt to gain information and knowledge concerning a confederate of hers who had been riding in the same [p. 16] vehicle as hers during the arrest.

During that interview, the Court will learn that she discussed her drug involvement on a wide-ranging basis.

At one point she did mention the offense for which she had been arrested, admitting ownership of the drugs.

At the end of that statement, they began to question her about involvement with David Young and other activities. She invoked her right to remain silent at that time, stating she no longer wished to talk to them.

Shortly thereafter, we are unsure of the exact date, but Officer Bergen will testify that in response to her request, he did go talk to her and she again stated an interest in talking to law enforcement officials about drug involvement and possibly working off her charges.

Upon learning that she had talked to DCI and had invoked, he ceased questioning her and told her that she [p. 17] must initiate contact with law enforcement, and several times she did on her own attempt to contact them and talk to them, as Officer Peters will testify to.

You'll find a remarkably large amount of these facts are agreed on. What is unagreed to is the effect that the law has on this situation.

There are a number of cases that we'll go through, Your Honor, but as I read these cases and I read *Michigan v. Harvey*, a 1990 case involving these questions, a comment by the majority opinion of the United States Supreme Court seemed particularly apt to our case where the Court stated, "although a Defendant may sometimes redeem his decision to speak with police, the Sixth Amendment does not disable a criminal defendant from exercising his free will."

Your Honor, I think you will find in this case that we have a situation here where the Defendant did request [p. 18] the assistance of counsel under the Sixth Amendment and I think this Court should be aware of a number of

cases which I will be citing and referring to in these arguments. The first is *Michigan v. Jackson*, a 1986 case, 89 L.Ed.2d 63. I believe that is what we have here, Your Honor.

If the Court desires Lawyers Edition or U.S. cites, I can give those.

In a 5-4 opinion, the Court held that the Michigan defendant who had been arrested and requested counsel at Arraignment could not later be interviewed by police after counsel had been appointed simply because he waived Miranda, holding that once a Defendant has requested counsel at an arraignment, further interrogation is barred under *Miranda* pursuant to the *Edward's* decision. The Court may recall in *Edwards*, the Court said that if you invoke your right to counsel, further reinitiated contact with police [p. 19] must be by the Defendant, that if the police reinitiate contact with the Defendant, it is then suppressible even though there might be a voluntary waiver of *Miranda*. So the holding in *Edwards*, *Edwards* and the other courts made clear the purpose of the *Edwards* rule, and that is that the *Edwards* rule is invoked to avoid defendants being badgered by the police in to confessions. The *Edwards* rule prevented them from going back to attempt to get *Miranda* waived after they had already invoked their right to counsel.

I think the purpose of that rule is going to be very important, Your Honor, as we discuss this case here today. Your Honor, what you'll see here Defendant who was badgered by police but a Defendant who consistently attempted to contact the police and speak to them.

There are several other cases, Your Honor, I think, that will be important [p. 20] as the Court reviews this. *Patterson v. Illinois*, a 1988 case, 101 L.Ed.2d, 261. In *Patterson*, Patterson had been arrested and charged with murder. His right to counsel has attached under the Sixth Amendment pursuant to Illinois authority. Patterson, unlike Jackson, did not invoke his right to counsel at arraignment. The court held that since Patterson had not specifically asked for an attorney, that a Miranda waiver was sufficient for several reasons. one, it held that recontact with Patterson was not barred since Patterson had not invoked his right to counsel at arraignment; two, they held that a waiver of Miranda is sufficient to waive the Sixth Amendment counsel right. That would be important here, Your Honor, particularly in the sense that a Miranda waiver was obtained and would be appropriate to weigh the Sixth Amendment rights.

In *Michigan v. Harvey*, a 1990 case 108 L.Ed.2d 293, the Court held that [p. 21] what is required is the existence of the Sixth Amendment right, and that it must be asserted. That follows from *Patterson* that you must not only have the right, you must assert the right. A somewhat important distinction, Your Honor, since the Court held that you have the right whether you assert it or not. Regardless of that, the courts have held that it must be asserted.

In *Michigan v. Harvey*, the court held that even the statements were improperly obtained after the right to counsel.

Under *Michigan v. Jackson*, they will be admissible to impeach the defendant should the defendant testify.

Finally, Your Honor, in 1991, *McNeil v. Wisconsin* was decided, 115 L.Ed.2d 158. McNeil was charged with armed robbery and arrested on a warrant for armed robbery. He requested counsel and requested to remain silent. Thereafter, police officers from another jurisdiction interviewed him [p. 22] concerning another case, a murder and robbery in another jurisdiction. Justice Scalia, in a 6-3 majority ruled that an invocation of right to counsel at arraignment was not an indication of right to counsel for all cases on a Fifth Amendment purpose. They stated that the statements were admissible in the murder-robbery case in this second jurisdiction.

Your Honor, in this case we think this is important because you will find that when the officers went in to interview her, they did not go to interview her about their existing case but about another case which might be related to that.

It is important to note that in *McNeil v. Wisconsin*, Justice Scalia states that the Sixth Amendment is offense specific, that an invocation of the right to counsel under the Sixth Amendment is offense specific. The offense that we think the evidence will show that they went to talk to her [p. 23] about this date involved her other dealings with David Young, not this particular offense, although it did come up in passing, Your Honor.

There is one Wyoming case that bears a similarity to this case, Your Honor, and that is Wells v. State, 846 P.2d 589, a 1992 case.

Prior to beginning evidence, I think this Court should perhaps have the facts of Wells in mind.

Mr. Wells was arrested on drug charges on a warrant that was issued. He was down in the State of Colorado and did not initially waive extradition as I understand the facts. On February 20, 1990, the Laramie County Court appointed the Public Defender's Office to represent the appellant, a situation not unlike our own. On March 27, Your Honor – or excuse me – Yes, March 27, over a month after the appointment of counsel, two agents went to Colorado to transport the appellant to Cheyenne. Undoubtedly, Your Honor, the Court held [p. 24] that he had invoked his right to counsel by having the public defenders appointed to represent him. During that point in time, he began saying some things about the case. They then, after he make some statements about starting a conversation, something to do with the case, they then "Mirandized" him. Wells stated that he felt like he felt under *Jackson*, that the Fifth Amendment waiver wasn't good enough. They had initiated or that they had talked to him after he had had counsel appointed under the Sixth Amendment. The *Wells* court held no, holding that making comments about the related matters to this case constituted a re-initiation.

In light of this, Your Honor, I think it is very important that this Court remember two things, the fact that the officers did not know that Miss Houghton had counsel appointed is irrelevant. The fact that the officers did not know that she was trying to [p. 25] speak to the police through Officer Bergen is equally irrelevant in terms of whether she re-initiated contact with the police.

Holding and citing *Edwards*, the *Wells* court said "*Edwards* focuses on the state of mind of the suspect, not on the police."

In summary, Your Honor, I think after you hear this evidence, that what you'll find is that shortly after her incarceration, the Defendant, in fact, did request counsel, but she re-initiated contact with the police. She evidently and obviously choose to have contact with the police again despite a request for counsel. Officer Bergen will testify that she wanted to speak to him about drug matters and clearing drug matters up. These officers will testify that she willingly talked to them and continued to talk to them afterward, Your Honor.

Moreover, the officers under *McNeil* did not seek to talk to her about this [p. 26] case. Those comments were simply part of an investigation of another case, and we think when this Court looks at it and looks at the totality of the circumstances, that, in fact, this is not a person under *Edwards* as it was adopted in *Jackson*, being badgered by the police, but a person who at every turn wanted to talk to the police in an attempt to save herself exposure upon a criminal case.

THE COURT: Given your authorities cited, I want to go back to what you said was, I guess, a stipulation at the outset that for the purposes of these proceedings at the time the pauper's affidavit was executed, we did have an indication to a right to counsel?

MR. BLONIGEN: For purposes of this hearing, yes, I'm going to agree to that, Your Honor, because she clearly requested counsel. Jackson uses the term "arraignment." Obviously our arraignments here don't take place until much later.

[p. 27] THE COURT: The initial appearance?

MR. BLONIGEN: The initial appearance in this case. My understanding of the situation that happened at the hearing, and it is very common in this jurisdiction, is that this Court asks the Defendant, are you going to hire your own attorney or do you feel you need the services of a Court-appointed attorney? The person then says, if they say they want Court-appointed, I need a court-appointed attorney, the Court will have them raise their hand, swear that they are telling the truth on the application, and deliver the application to the defendant. I do not think it is a clear indication, however, for purposes of this hearing, Your Honor, that we are willing to stipulate that on July 24th, that constituted her request for counsel.

I think the real question is, one, did she re-initiate contact with the police under the meaning of the case law; two, whether re-initiated or not, [p. 28] does the officer attempt to gain other information on other cases, fall under *McNeil v. Wisconsin* or are we still under *Michigan v. Jackson?*

THE COURT: I understand.

Miss Sharum.

MS. SHARUM: As counsel stated, a lot of these facts are stipulated to.

I do believe that he misspoke one point in time which is that the application for public defender was signed by Judge Park on the 31st. Counsel was appointed on the 31st; However, the preliminary was held on August 1st. That preliminary was continued to the following week because counsel that had been appointed was Nadine McLeod and she was not available. The case was then

reassigned to me that day in order to have me take the case the following week to the preliminary hearing.

As far as many of the other facts, I would stipulate to the fact that she was charged November 3rd, that she went [p. 29] to the initial appearance on the 24th and at that point asked for a pauper statement.

I do stipulate to the fact that she did ask to talk to Sergeant Bergen at that time. I do not believe she ever at any time asked to talk to the DCI, at lease prior to the DCI arriving there.

I would point out to the Court that Mr. Blonigen talks about related-unrelated matters. This is a case where the matter in which they came to talk about, David Young, is very related. This is one of the individuals who was in the car with her at the time of her arrest. I think that when we go and talk to somebody who potentially is a co-defendant, it is a very related matter to your case. I don't think that it falls outside in an unrelated matter. I would cite several cases for this Sixth Amendment right to counsel.

I think this Court first laid out [p. 30] some of the standards in the *Massiah* case, 377 US 201.

I think that this case also falls under a case called *Main v. Moulton*, 474 US 159. This is a case in which the co-defendant was listening in on the conversation. He made some statements against interest. He was doing this to the police. The police had another legitimate reason for having him do this. The other legitimate reason was that they were concerned that he may have had the desire to get rid of a potential witness, that he may have been

plotting this person's murder. They still held that it was inadmissible, the Court did, in that case.

As far as *Michigan v. Jackson,* they said the initial appearance started adversarial judicial proceedings as far as right to counsel being had.

Also another case, *Brewer v. Williams,* 430 US 387, this is the Christian burial speech. The defendant [p. 31] was being transported from one city to another facing different charges. The police officer start talking about a Christian burial, wouldn't it be nice that the girl that he was accused of murdering had a Christian burial and he proceeded to make a number of incriminating statements. They held that right to counsel had already attached, he had already asked for counsel in this case and held that his statements were inadmissible.

This is a situation where the police officers went up and talked with her after counsel had already been appointed. On a very much related matter, they may have started going up there asking about a co-defendant. But a co-defendant, I mean when you start talking about somebody like that, you are talking about your own case and the aspects and it was held that these statements are inadmissible here because counsel was not informed that she was going to be interviewed. She [p. 32] had made assertions that she could have counsel by filling out the affidavit and asking for counsel, and counsel had already been approved and appointed in this case, Your Honor.

THE COURT: What about the exhibit? I presume that you are aware of that exhibit?

MS. SHARUM: Yes.

THE COURT: Would you stipulate to its authenticity?

MS. SHARUM: Yes sir.

MR. BLONIGEN: Your Honor, we'll have two very brief witnesses.

We would first call Agent Peters.

[p. 33]

CHRIS PETERS

called as a witness on behalf of the State, being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BLONIGEN:

Q. Would you state your name for the record please?

A. My name is Chris Peters.

Q. Where are you assigned at this present time?

A. I am a special agent for the Division of Criminal Investigation, State of Wyoming.

Q. On August 1, 1995, did you receive a request for assistance from the Wyoming Highway Patrol?

A. Yes.

Q. What was the general nature of that request?

A. They said that they had made an arrest and had taken some substance that they believed to be a controlled substance off a person that they had arrested.

[p. 34] Q. Did they seize anything else that was of a suspicious nature other than the controlled substance itself?

A. Yes.

Q. What was that?

A. Glassware.

Q. What was interesting about this glassware to you as a drug enforcement officer?

A. It was glassware, very expensive glass ware commonly associated with the manufacture of meth-amphetamine.

Q. Did they identify that as being associated with any particular person?

A. Yes.

Q. Who was that?

A. David Young.

Q. Was anybody with David Young arrested when the glassware was found?

A. Yes.

Q. Who was that?

A. Sandra Houghton.

Q. After discussing this matter with the Highway Patrol, did you have occasion on August 1, 1995, to speak with the Defendant Sandra Houghton?

A. Yes.

[p. 35] Q. Where was that at?

A. The Casper Police Department.

Q. Was she in custody at that time?

A. Yes she was.

Q. Were you aware at that time that she had appointed counsel?

A. No.

Q. When you went and spoke to her, according to your report, you gave her her Miranda warnings and she agreed to talk to you, is that correct?

A. Yes.

Q. When she talked to you, did she express any hesitancy about talking to you?

A. No.

Q. What was the primary subject of your discussion?

A. The methamphetamine.

Q. Now when you refer to the methamphetamine, what were the primary, what was the primary goal of your interrogation of Miss Houghton at that time?

A. We wanted information about David Young.

Q. Did you talk to her about her experience and knowledge of David Young?

A. Yes.

[p. 36] Q. Did she make statements about the methamphetamine that she had in her possession when she was arrested by Officer Baldwin?

A. Yes.

Q. Were those in result of questioning or comments by her? How did that come about, if you recall?

A. Both.

Q. You did ask her some questions about it then?

A. Yes.

Q. Now at some point in time, did she invoke her right to remain silent?

A. Yes.

Q. How did that come about?

A. We were getting very pointed with our questions leading to David Young as being the original source of the methamphetamine she had.

Q. At that time did she indicate she no longer wished to speak to you at that time?

A. Yes.

Q. What did you do then?

A. Left.

Q. Did you ever initiate contact with her again?

[p. 37] A. No.

Q. Did she ever initiate contact with you?

A. Yes.

Q. How many times?

A. I can only guess.

Q. Okay, proximate?

A. Five.

Q. Did you ever interrogate her again?

A. Yes, we spoke with her.

Q. You did speak with her on some of these cases?

A. Every time she called, I talked to her.

Q. Who initiated these phone calls?

A. She did.

Q. What did she want to talk to you about?

A. She said that she wanted to get more information related to controlled substances.

Q. And she called you on approximately five more times?

A. Yes.

Q. Did you ever become aware that she was also attempting to work through Officer Bergen to make such statements?

A. Later we did, yes.

Q. How did you become aware of that?

[p. 38] A. He told us.

Q. Were you aware of her attempt to contact Officer Bergen when you spoke to her on August 1st?

A. No.

MR. BLONIGEN: That is all the questions I have, Your Honor.

THE COURT: Cross examination.

CROSS EXAMINATION

BY MS. SHARUM:

Q. You stated that she tried to re-initiate contact with you, correct?

A. Yes.

Q. Isn't it true that she tried to initiate contact on approximately two times?

A. I can only guess. I would say that it was higher.

Q. Did you at any point in time inform counsel that she was trying to initiate contact with you?

A. I don't understand.

Q. Did you at any point in time notify the Public Defender's Office that this Defendant was [p. 39] trying to initiate contact with you?

A. No.

Q. Did you at any point in time ask the Public Defender's Office for permission to speak with Miss Houghton?

A. No.

Q. On August 1, when you went up there, did you check prior to going up there whether or not counsel had been appointed?

A. No.

Q. When you went up there, you went up there to talk to her about David Young, correct?

A. Yes.

Q. David Young was in the car with her when she was arrested, right?

A. Yes.

Q. Potentially David Young could be a co-defendant with her, correct?

A. Yes.

Q. Did you ever talk with anyone else concerning this case as far as David Young concerning her or vice versa?

A. I don't understand the question.

Q. Did you ever try to talk to David Young concerning Sandra Houghton? Because he was [p. 40] represented by counsel, did you avoid talking with him because of that?

A. No.

Q. Were you aware at any time that Officer Bergen had been requested to talk with her?

A. Yes.

Q. When did you become aware of that?

A. After we talked to her on August 1st.

Q. At any time prior to August 1st, did she initiate contact with you?

A. No.

MS. SHARUM: No further questions, Your Honor.

MR. BLONIGEN: We have nothing further for this witness, Your Honor.

THE COURT: I would ask, Mr. Peters, filed in this matter with the motion to suppress that has been brought by Miss Sharum on behalf of the client, is a second page of a document that says, "Interview S. Houghton" and it concludes with a dated August 10, and it concerns the August 1st interview, is that correct?

A. That is correct.

[p. 41] THE COURT: This is your report?

A. Yes.

THE COURT: A true and correct copy of the report?

A. Yes.

THE COURT: That is all I have.

MR. BLONIGEN: We would call Sergeant or Detective Pat Bergen.

[p. 42] PAT BERGEN

called as witness by the State, being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

MR. BLONIGEN: Do you have any objection to Agent Peters being released?

MS. SHARUM: No.

Q. Would you state your name for the record, please?

A. Lieutenant Pat Bergen.

Q. Where are you employed?

A. Casper Police Department.

Q. Were you so employed the last week of July and first part of August of this year?

A. Yes sir, I was.

Q. During that time period, were you made aware that an inmate at the Natrona County Jail named Sandra Houghton, a Defendant in this case, wanted to speak with you?

A. Yes sir I was.

Q. Had you known her previously?

A. Yes sir I have.

[p. 43] Q. According to a document that has been stipulated in to evidence, she tried to get ahold of you

several times in late July. Do you recall her attempting to get ahold of you through the Jail several times?

A. Yes, several jailers did make comments to me that she was trying to reach me, to speak to me. I had messages in my box from the Sheriff's Department that Sandra Houghton had asked specifically to speak with me.

Q. You had nothing to do with the investigation of her case, did you?

A. Nothing. I had no idea why she was trying to contact me.

Q. Did you then get ahold of her?

A. Yes.

Q. Was that before or after the August 1st?

A. It was after August 1.

Q. What happened?

A. I was, I had time during the day shift. I called up the Jail, told them I would be available to speak with Miss Houghton and asked for them to produce her at the first floor at the interview rooms.

Q. Did you talk to her?

[p. 44] A. Yes I did.

Q. Did she tell you what she wanted to talk to you about?

A. Yes, it was very general and brief in the beginning, what is going on, that she was in Jail, what was

happening, involvement with Mr. Young, and how things were going in her life. She wanted to talk a little bit and I asked who had arrested her and she mentioned DCI had and I said, well, that is who you are going to have to talk to and deal with, and during that conversation, she said, well, I invoked my rights with them and didn't want to speak to them any more and they quit talking to me.

Q. But she had wanted to talk to you?

A. Yes.

Q. What did you do at that point since she said that?

A. I stopped talking because from experience that if she has invoked, then I can't speak to her or take any information that she may give me any further.

Q. Did she indicate to you a readiness and willingness to talk about her involvement and knowledge of drug activities in the Casper area?

A. Yes she did.

[p. 45] Q. Why would she do that?

A. She wanted out of Jail was her primary concern. She wanted to give information assisting us in any way possible that may assist her in leniency or attempting to get out of Jail.

MR. BLONIGEN: That is all the questions I have, Your Honor.

CROSS EXAMINATION

BY MS. SHARUM:

Q. How long have you known Miss Houghton?

A. I can't tell you the years, Ma'am. I don't know for sure where I first met her or how long it has been.

Q. You would say well over a year?

A. At least that and her family and associates, yes.

Q. And you knew her sister several years ago, a while back?

A. I believe so. That is how our first conversation started, with a family member.

Q. Her sister, you testified at her trial in Douglas, correct?

[p. 46] A. Which sister? You'll have to help me here.

Q. Debbie?

A. Debbie? Yes. That is one of the sisters that I have testified against, yes.

Q. In fact, you kind of testified for her at that trial, didn't you?

A. Testified for her?

Q. Yes?

A. I know that there was a hearing where they were setting bond for a lesser amount and her dependability on where she lived and that she lived in Casper and could be brought back to Court, and I did give the information that she was a local girl, that her parents lived in

town and they set her bond at a lesser amount. It was not testifying in court other than that.

Q. Could Miss Houghton have viewed you perhaps as somebody who might be a friend to her?

A. Absolutely. That is how the conversation started. I think one of the statements was, "I need to talk to somebody."

Q. So she might have called you up there not as in an official capacity as a police officer but rather a friend, isn't that correct?

[p. 47] A. It started that way, yes Ma'am.

Q. So she did not, she was not asking for initiation of contact then with Lieutenant Bergen from the Casper Police Department but more so Mr. Bergen that she knew?

A. There is only one place that it could have led to was police involvement and with her activities in the City of Casper. It wasn't a conversation of how the children were, no Ma'am.

Q. But she started off with a friendly conversation?

A. Yes, it was very friendly, yes.

Q. About you being her friend, correct?

A. Not as a friend, just as knowing me, as having heard of me.

Q. Lieutenant Bergen, upon finding out that she had counsel and had invoked her rights, you chose not to speak with her any further, correct?

A. Yes I did.

Q. You chose not to speak with her because you knew that once she had invoked her right to counsel, you could not speak with her?

A. That anything she may say may, you know, would be inadmissible if it was necessary for court, correct.

[p. 48] Q. Knowing that, you chose to leave the interview room, correct?

A. Yes. What I did was I left to confirm what she was telling and that is when I called in to the DCI.

Q. You could have also called the Court on the fifth floor and found out whether counsel had been appointed, could you not?

A. Yes, I suppose, yes.

MS. SHARUM: I have no further questions.

REDIRECT EXAMINATION

BY MR. BLONIGEN:

Q. Officer Bergen, how well do you know the Defendant?

A. I never had any court cases against her. Any previous conversation, unless it was by phone, any personal one on one, I cannot recall.

Q. She came to you because you were a police officer who she knew of, is that correct?

A. In generalities, yes sir.

Q. Did she discuss anything other than law enforcement related matters? You said the [p. 49] conversation was friendly and I understand that. When you mean friendly, was the topic still drugs and what was going on with drugs?

A. How her life was going on the street, problems she was in, Mr. Young, how she needed to get out. It was all street level, that type of information and assistance that she needed.

Q. She knew you were a police officer?

A. Absolutely. I was in uniform.

Q. She referred to you in her request as Sergeant Bergen?

A. Sergeant Bergen, yes.

MR. BLONIGEN: That is all the questions I have.

THE COURT: Any recross?

MS. SHARUM: No recross, Your Honor.

THE COURT: You may step down, sir.

MR. BLONIGEN: We have no other witnesses, Your Honor.

MS. SHARUM: We have only argument, Your Honor.

THE COURT: Okay.

MR. BLONIGEN: Your Honor, I would like to bring the Court back initially to this initiation point and I

would like to [p. 50] quote from *Michigan v. Harvey.* Your Honor, the exclusionary rule is not Constitutional in nature. It is enacted to protect people from police misconduct, and if there is misconduct in this case, I can't identify it. We have officers who, acting on their best information, went and talked to an individual who freely talked to them. It is undisputed they did not know she had appointed counsel. This is not some litmus test of what counsel thinks or what counsel would do. It is rather as they said in *Wells v. State,* a question of the state of mind of the Defendant.

Now if you read all these cases that they cited, they all cited *Michigan v. Jackson* that reached the decision it did for one reason and that was that they didn't want, just as in *Edwards,* people badgered in to waiving their rights when they had already invoked their right to counsel.

What they said in that regard is [p. 51] crucial, Your Honor, in their observation of *Edwards.*

In *Michigan v. Harvey* the Court stated, "Edward thus established another prophylactic rule designed to prevent police from badgering a defendant into waiving his previously asserted Miranda rights." They go on to say though, that if that individual, just as in *Edwards,* re-initiates contact with the police, indicating that they desire – you have to remember, what they say with *Edwards,* when somebody invokes, as under *Edwards* they say that the person has made a decision to deal with the police only with the assistance of counsel; However, if that person re-initiates contact with the police, that overcomes that presumption and shows that they do wish to

deal with the police despite that and they can waive their right to counsel.

One thing that they specifically rejected in the *McNeil* case was the [p. 52] idea that to competently waive your Fifth or Sixth Amendment rights that you need to have a lawyer to help you do it. As they stated, a person might later regret their decision, but as long as it is an exercise in free will, they can choose to talk to them, and if they re-initiate and then a valid Miranda warning is obtained after that point in time, their statements are admissible.

In *Bradshaw, Oregon v. Bradshaw* cited in the *Wells* case – it is one of the first cases to come out of the United States Supreme Court after the *Edwards* decision – Bradshaw initiated or claimed his rights. Shortly thereafter he made a statement to the police, "What is going to happen to me now?" The Court held that that was a re-initiation that allowed the police to obtain a waiver and to interrogate him.

Other similar types of comments have also been held to be a [p. 53] re-initiation.

In the *Fields* case they held that it was a re-initiation because he requested a polygraph from the police. Now in this *Wells* case, what happens is he begins talking on their way up stating things that they then re-Mirandize him and take a statement.

I think there is something important here and I believe counsel is going to point out the fact that although if you re-initiate contact with Officer Bergen, DCI didn't know about that, but, Your Honor, in *Arizona*

v. Robertson they were talking about Edwards. What happened in *Robertson* is two different sets of burglaries. Mr. Robertson invoked his Fifth Amendment rights thereafter and another set of detectives came in and thought nothing of the invocation or that other officers were involved, and got a statement. The Court held under *Edwards* though, he is still in custodial interrogation, that Fifth [p. 54] Amendment assertion still applies.

They said the fact that the officers didn't know what the officer was doing was irrelevant, that it was the Defendant's rights and the Defendant's state of mind that was appropriate.

In *Michigan, Michigan v. Jackson,* again those officers didn't know that Mr. Jackson had requested counsel. The Court held it irrelevant.

What matters is what they said in *Wells. Edwards* focuses on the state of mind of the suspect, of the suspect and not the police. The fact that Officer Bergen's contact or her attempt to contact him were not known to the DCI is equally irrelevant.

What this focuses on is what that re-initiation and attempts at re-initiation tell about the defendant's state of mind. She did not wish counsel to keep her from dealing with the police with other than counsel as *Edwards* requires but rather she [p. 55] wanted to deal with the police and have the help of an attorney later when she worked out her plea agreement or whatever she was going to do.

Her state of mind, Your Honor – and when we look at that, *Edwards* is to protect her from being badgered, from

being forced in to giving a confession and repeated contact.

If there was ever a case that is leagues away from *Edwards,* it is this one. She re-initiated contact with the police on an estimated six occasions, Your Honor. Six occasions. You cannot apply these rules of law in some cold and barren atmosphere. You must look at the purpose for which they are intended. She clearly re-initiated. It doesn't have to be a re-initiation about everything in this specific case.

The point is that she chooses to deal with the police about her drug involvement even though she had requested an attorney.

Moreover, the officers didn't go [p. 56] there to interrogate her about the subject, although there were some questions asked in that matter, but about other matters, Your Honor.

So clearly we think that she re-initiated. I think that is the key point here. Did she re-initiate or not?

This isn't about what they could have done, would have done, should have done. This is about, as the Court says in *Wells,* the state of mind of the suspect, and not the police.

The Court goes on to say that it focuses on the state of mind of the suspect and not the police.

A lesser argument, Your Honor, that we would put forth is under *McNeil.* Counsel says there is a co-defendant, they are related, therefore *McNeil* doesn't apply. But in *McNeil,* Justice Scalia's opinion, joined by five other members of the Court, says that that is not the point.

Your Honor, it doesn't matter if [p. 57] they are related. He said the invocation of the Sixth Amendment is offense-specific, the offense for which it had been invoked. It was a possession of methamphetamine on July 23, 1995. The fact that the sale of that methamphetamine, conspiracy to sell the same, or past deliveries or conspiracies with David Young is not the offense that the Sixth Amendment was invoked on. It was only that possession charge that it had been invoked on.

But, Your Honor, I don't think that you need to get to the *McNeil* question if the question here is whether there was a re-initiation of police contact discussed, the general subject matter of her arrest, particularly drugs. She did that. It is in writing, Your Honor. I think I should read that for the record. And we'll also ask that this be included in the record, Your Honor, the note by Sandra Houghten: I would like to talk to Sergeant Pat [p. 58] Bergen. I have been asking for two days." She writes on. She says July 26, '95, Your Honor, but I think it was probably the 25th since the two officers both indicate that they received it on the 25th. And the response of Officer Bergen who has been notified for the third time, "When he can, he will come see you."

Five calls to DCI? A person badgered in to waiving their rights, Your Honor?

That is not what happened here. She re-initiated. She wanted to re-initiate contact with the police and that was done. The fact that she decided to do it by sending that note, by contacting Sergeant Bergen, and that another officer came and talked to her, is really irrelevant. Her

state of mind is that she wanted to re-initiate contact with the police and that is the key point here.

THE COURT: Thank you very much.

Miss Sharum.

[p. 59] MS. SHARUM: Your Honor, I don't think it is irrelevant that the fact that the DCI did not know that she had not, that she was contacting Sargeant Bergen. I think that is very relevant. It is not just her state of mind. What was the DCI doing? They went up there to talk with her about a case, about David Young they said. Well, David Young is in that car with her when they get arrested. What are they going to start talking about? They are going to start talking about that evening and find something to talk about backward or forward.

David Young is a potential co-defendant for Sandra Houghton on that night. They went up there to talk about, they say, David Young. But the fact of the matter is that if you are going to talk about David Young, you are going to end up talking about your own case.

She had made attempts to talk to Officer Bergen, not to the DCI. There [p. 60] is a difference and in some people's mind, there is a big difference. Some consider it as Casper Police and DCI. Not a very big difference.

She initiated a contact with an officer with whom she had some experience with because of her sister. She did not initiate contact with the Department of Criminal Investigation.

This is, in my opinion, very relevant that she did not initiate contact with them. They initiated contact later on, and there were statements later on that were irrelevant,

but we are talking about the contact prior to the August 1st statement.

This is the statement that is being asked to be suppressed. This is the contact that we have to look at. Was she trying to contact the DCI or was she trying to contact an officer with whom she had past experience with? It is relevant that she did not know that Officer Bergen was being contacted.

[p. 61] They went up there to investigate her co-defendant in this crime and this, I think, makes *McNeil* not relevant.

Again, I would like to point to this case, the Main case that I cited earlier, *Main v. Moulton*, 474 US 159. In that case they said that they had legitimate reasons for listening in on these conversations, very legitimate reasons, legitimate reasons not to deal with this case, and they still held it to be inadmissible because they were listening, you know, even though that they had other reasons, they still had, these were still statements against his case.

She had invoked her right to counsel when she asked for counsel and counsel had been appointed in this case and they should have notified counsel about this interrogation that was going to take place concerning this incident, and counsel should have been made available to her, made to be there and [p. 62] present at the time.

These statements are inadmissible. It is the contention of the Defendant at this time, based on the fact that he went up to talk to her about a co-defendant, that she did not re-initiate contact with DCI. If anything, she

reinitiated contact only with Officer Bergen, and she had done that because she had had past experience with him. She did not know anything about how the DCI operated. She knew about Lieutenant Bergen.

We ask that these statements be suppressed.

THE COURT: Let me ask questions of both counsel. I know it is not a Fifth Amendment question, but still, prior to her interview, she is again advised to her right to counsel at that point in time and then proceeded with the interview. We sort of have a subject advisement. Doesn't that constitute a waiver?

MR. BLONIGEN: Your Honor, if I may, I [p. 63] think that no doubt there is a waiver there; However, if she invoked her right at the initial appearance and subsequently waived that, what I think you have to look to is *Michigan v. Jackson* or *Illinois v. Patterson*. In addition, what they say in *Jackson*, what they say, and in *McNeil*, and *Patterson* and *Harvey* is that, look, we realize by making this rule, we are taking some voluntary waivers out and throwing them away.

But I think the point here, Your Honor, is one of two things. What *McNeil* says is that it has to be offense-specific. We are not going to throw that baby out with the bathwater.

Number two, in *Patterson*, the interest that he had the Jail rights of Jackson but because he didn't utter the magic words, "I want an attorney," they said that his waiver was appropriate.

But under *Patterson*, Your Honor, I would note that if she is re-initiating [p. 64] or falls under *McNeil*, a Fifth

Amendment waiver is sufficient to waive the Sixth Amendment rights, so I think, Your Honor, that I agree there is a voluntary waiver there.

I don't think this is a question of coercion. It is simply a question of extremely bad timing. The officers did not know she was represented.

I would like to address two points counsel brought up very briefly. One, she cites *Main v. Moulton*. I don't think *Main v. Moulton* is appropriate, Your Honor. In that case you have a government agent interviewing a person who has surreptitiously claimed the right to counsel on the offense in question.

Having done that, this is a totally different issue than whether there was a re-initiation and they went in there.

Secondly, the Court brings up the issue of the Miranda waiver which was clearly not contested here. Remember, if there is a re-initiation, that is [p. 65] not enough information the Court has to find first some re-initiation of the desire to contact the police and bring them back in to the situation; and secondly, even after that, there has to be a valid Miranda.

Now there was a valid Miranda here. I don't think that is really in question, but the Miranda waiver issue still does play a key part in this even though there is a re-initiation under the State's theory.

Your Honor, I think though that this still boils down to what they said in *Michigan v. Harvey*, although a Defendant may sometime later retract his decision to speak with the police, the Sixth Amendment did not disable a criminal defendant from exercising his free will. To hold

that a defendant is inherently incapable of relinquishing his right to counsel when it is invoked would be to imprison a man and his privileges and call it unconstitutional.

[p. 66] Your Honor, wise or not, the defendants have rights to make these choices.

The second point, Your Honor, is in *Michigan v. Jackson*, the Court specifically held that officers would be held to have joint knowledge over all officers or all court personnel. That is why the fact that they didn't know Mr. Jackson had invoked his right to counsel was deemed irrelevant. Well, Your Honor, that is true, but it works both ways. Similarly you look at the totality of what was going on with the officers herein and her desire to reinitiate contact with them, and they are equally charged with joint knowledge of all of those things. it works both ways, Your Honor.

THE COURT: Miss Sharum.

MS. SHARUM: Your Honor, I don't think *McNeil* applies because I think this is not a separate incident here. I think that this is the same matter that they were contacting her on. This is her [p. 67] co-defendant. In this case, when questioning somebody about their knowledge of the co-defendant, eventually it is going to come down to your case. I think that is a logical assumption. A potential co-defendant, I don't believe, has actually been indicted on this or charged at this time, to my knowledge, although I could be wrong.

MR. BLONIGEN: That is correct.

MS. SHARUM: Is that correct?

MR. BLONIGEN: Yes.

MS. SHARUM: This is a case in which she tried to contact an officer who she was aware of, who she knew, who she had had previous contact with, and not try to contact the DCI.

Again, I think that she invoked her right to counsel and that that right should still be held in this and these stateaments should be held inadmissible.

THE COURT: Okay, I'm going to take it under advisement. I would ask that the [p. 68] exhibit that we have referred to previously be marked as State's exhibit number 1 and made part of the record and I'll have the court reporter do so.

I think it is a matter that has some legal arguments that need to be looked in to and I'm going to look at the case law.

I would note that the evidence presented quite strongly indicates to me that there was an effort to re-initiate and that is the only evidence that I have before me is the two law enforcement officers. But the totality of the evidence needs to be looked at in the context of the exhibit and the chronology that has been provided. So I'll take it under advisement.

MR. BLONIGEN: Your Honor, I have a number of cases or the volumes involving the cases that we have cited. Does the Court want me to leave those with the Court?

THE COURT: Yes, if you would.

[p. 69] MS. SHARUM: I also have a number of them here if you want them.

MR. BLONIGEN: We'll deposit them in your office.

THE COURT: Leave the markers in them.

MS. SHARUM: Your Honor, if we could address one brief matter also. I have just been given notice of intention to use prior wrong act under 404(b). I have just been given notice of this. I don't have the research or researched it to any large extent; however, we object to this and would ask for an opportunity to respond to this some time prior to those arguments being admitted.

MR. BLONIGEN: Yes sir, and if I might, this is conditional, as I indicated in my documents on file. We do not intend to mention these in opening statements or use them in our case in chief. They would only become relevant if certain defenses are raised or if the Defendant should testify. It may be that they will have to wait until trial to

* * *

[p. 71] CERTIFICATE

STATE OF WYOMING)
) ss.
COUNTY OF NATRONA)

I, THOMAS G. BAILEY, RPR, Official Court Reporter in and for the Seventh Judicial District of Wyoming, do hereby certify the above and foregoing printed pages

contain a true and correct transcription of my shorthand notes taken upon the occasion set forth in the caption page hereof as reduced to print type by me.

Dated this 3rd day of June, 1996 at Casper, Wyoming.

/s/ Thomas G. Bailey
Thomas G. Bailey, RPR

IN THE SEVENTH JUDICIAL DISTRICT COURT
FOR THE STATE OF WYOMING

STATE OF WYOMING, Plaintiff, vs. SANDRA HOUGHTON, Defendant.	)	Criminal Case No. 12880

OFFICIAL COURT REPORTER'S
CERTIFICATE OF COMPLETION

(Filed Jun. 03, 1996)

BE IT REMEMBERED that the Original of the Official Court Reporter's Transcript of Proceedings in the above-entitled matter was filed with the Clerk of the District Court of the Seventh Judicial District of the State of Wyoming on June 3, 1996 and that pursuant to Rule 2.06 of the Wyoming Supreme Court Appellate Rules, effective on the 1st of November, 1992, this Certificate notices

the Clerk of the Wyoming Supreme Court and counsel (or parties) of record of that filing in the trial court; that copies of this Certificate are being mailed to the Clerk of the Wyoming Supreme Court and all counsel (or parties) legally interested in this proceeding thus transcribed and filed herein.

Dated this 3rd day of June, 1996.

/s/ Thomas G. Bailey
Thomas G. Bailey, RPR
Official Court Reporter
Seventh Judicial District
State of Wyoming

STATE OF WYOMING,)
) SS.
COUNTY OF NATRONA)

IN THE DISTRICT COURT
SEVENTH JUDICIAL DISTRICT

Criminal No. 12880/JM-MB

STATE OF WYOMING,)
Plaintiff,)
)
vs.)
SANDRA HOUGHTON,)
)
Defendant.)

ORDER

(Filed Oct. 27, 1995)

THIS MATTER having come before the Court upon the Defendant's Motion to Suppress, and the Court having reviewed the matter finds that said Motion should be denied pursuant to the decision letter filed herein on October 2, 1995, by the Honorable Dan Spangler, Seventh Judicial District Court Judge;

NOW, THEREFORE, IT IS ORDERED that the above-stated Motion be, and the same hereby is, denied.

DONE IN OPEN COURT this 27th day of October, 1995.

BY THE COURT:

/s/ Dan Spangler
DISTRICT COURT JUDGE SPANGLER

APPROVED AS TO FORM:

/s/ Monica A. Sharum
Monica A. Sharum,
Attorney for
Defendant

/s/ Michael A. Blonigen
Michael A. Blonigen,
Assistant District
Attorney

STATE OF WYOMING
SEVENTH JUDICIAL DISTRICT
[Seal]

W. THOMAS SULLINS
DISTRICT JUDGE

THOMAS G. BAILEY
COURT REPORTER

NATRONA COUNTY
COURTHOUSE
200 NORTH CENTER
CASPER, WYOMING 82601
(307) 235-9253

November 3, 1995

Michael A. Blonigen
Office of the District Attorney
200 North Center Street
Suite 300
Casper, Wyoming 82601

Monica Sharum
Office of the Public Defender
120 West First Street
Suite 300
Casper, Wyoming 82601

Re: State of Wyoming v. Sandra Houghton
Seventh Judicial District Court
Natrona County, Wyoming
Criminal Action No. 12880

DECISION LETTER

(Filed Nov. 3, 1995)

Dear Ms. Sharum and Mr. Blonigen:

The referenced case has come before the Court for consideration of the Defendant's Motion to Suppress filed October 17, 1995. Based upon the totality of the evidence presented at the hearing on the Motion to Suppress, the

Court rules that the request for the suppression of the August 1, 1995 statement given by Defendant to drug enforcement officer Chris Peters should be denied.

The defense is correct in asserting that under the Sixth and Fourteenth Amendments to the Constitution of the United States and Article 1, Section 10 of the Constitution of the State of Wyoming, the police have an affirmative obligation not to act in a manner that circumvents and thereby dilutes the protection afforded by the right to counsel. *Main v. Moulton*, 474 U.S. 159, 88 L.Ed.2d 481, 106 S.Ct. 477 (1985). In this case, however, it was clearly established by competent evidence that before and after the appointment of legal counsel the Defendant made several express requests to communicate with law enforcement officers; that the Defendant's communication with special agent Chris Peters on August 1, 1995, was to talk generally about methamphetamines and drug trafficking; that the Defendant knowingly and intelligently chose to communicate with the drug enforcement officer in the absence of her attorney; that there were no improprieties whatsoever on the part of the law enforcement officers involved in this matter; and that the Defendant knowingly and intelligently waived her right against self incrimination prior to making the statement of concern to this suppression motion. *McNeil v. Wisconsin*, 501 U.S. 171, 115 L.Ed.2d 158, 111 S.Ct. 2204 (1991); *Patterson v. Illinois*, 487 U.S. 285, 101 L.Ed.2d 261, 108 S.Ct. 2389 (1988); *Michigan v. Jackson*, 475 U.S. 625, 89 L.Ed.2d 631, 106 S.Ct. 1404 (1986); and *Wells v. State*, 846 P.2d 589 (Wyo. 1992).

The United States Supreme Court in the case of *Michigan v. Harvey*, 494 U.S. 344, 108 L.Ed.2d 293, 110 S.Ct.

1176 (1990), noted that nothing in the Sixth Amendment prevents a suspect charged with a crime and represented by counsel from voluntarily choosing, on his own, to speak with police in the absence of an attorney, and that although a defendant may sometimes later regret his decision to speak with the police, the Sixth Amendment does not disable a criminal defendant from exercising his free will. It is this Court's opinion that such pronouncement has direct application to this matter.

In accord with the foregoing discussion, the Motion to Suppress of the Defendant is hereby denied, and Mr. Blonigen is requested to prepare an order reflecting this ruling and submit the same to defense counsel for approval as to form.

Very truly yours,

/s/ W. Thomas Sullins
W. Thomas Sullins

WTS:bh

STATE OF WYOMING,)
) ss.
COUNTY OF NATRONA)

IN THE DISTRICT COURT
SEVENTH JUDICIAL DISTRICT
Criminal Action No. 12880

THE STATE OF WYOMING,)
Plaintiff,)
v.)
SANDRA HOUGHTON,)
Defendant.)

COURT REPORTER'S TRANSCRIPT OF PROCEEDINGS

VOLUME I (I OF II)

(FILED MAY 20, 1996)

BE IT REMEMBERED that the above-entitled matter came before the HONORABLE DAN SPANGLER, a Judge of the Seventh Judicial District of Wyoming, in the District Courtroom, Natrona County Courthouse, Casper, Natrona County, Wyoming.

PROCEEDINGS:

JURY TRIAL: November 6 and 7, 1995.

PROCEEDINGS REPORTED BY:

Sara C. McDowell
Official Court Reporter
Natrona County Courthouse
Room 237
Casper, Wyoming 82601
(307) 235-9255

[p. 2] APPEARANCES

For the State: MICHAEL A. BLONIGEN,
Assistant District Attorney
Natrona County Courthouse
200 North Center
Casper, Wyoming 82601

For the Defendant: MONICA A. SHARUM,
Assistant Public Defender
120 West 1st Street
Casper, Wyoming 82601

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[p. 6] EXHIBITS

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Description of Exhibit	Identified	Offered	Admitted
State's No. 1 – Manila envelope containing black bag and brown bag	73&74	(Not offered or admitted)	
State's No. 2 – Manila envelope containing a mailing safety tube	85	(Not offered or admitted)	
State's No. 3 – Wyoming State Crime Lab Identification Report	113	114	114

DEFENDANT'S EXHIBITS

(No Defendant's exhibits were introduced in this case.)

[p. 7] MONDAY, NOVEMBER 6, 1995,
MORNING SESSION, 9:00 a.m.

PROCEEDINGS

THE COURT: The Court will come to order. Ladies and gentlemen, you don't all have to sit on that side. Some of you can move over here, if you want a little more room there.

Would you please call the role of the jurors, Ms. Volin. And please answer as your names are called.

(The clerk called the role of the jurors.)

THE COURT: Ms. Volin, would you please swear the panel to answer the questions concerning their qualifications to serve as jurors.

THE CLERK: Yes, Your Honor.

(The clerk swears the jurors concerning their qualifications.)

THE COURT: Please be seated. Ladies and gentlemen, there are certain qualifications you must meet to serve as a juror in this state. Those requirements are that you be a citizen of the United States, over the age of 17, a resident of the state of Wyoming and County of Natrona for at least 90 days before being selected as a juror; that you be in possession of your natural faculties, of ordinary intelligence, and without mental or physical [p. 8] infirmity preventing satisfactory jury service; that you have a sufficient knowledge of the English language and you not be previously convicted of a felony.

Is there anyone who believes that he or she does not meet those qualifications? It appears that all the jurors are qualified.

Would you please swear is jurors to serve this term, Ms. Volin.

MS. VOLIN: Yes, Your Honor.

(The jurors are again sworn.)

THE COURT: Please be seated. Since I assume this is the first time on jury service for many of you, let me explain to you just a few of the procedures here, to make your stay a little more comfortable.

Generally, these cases start either at 9 o'clock or 10 o'clock in the morning. So when the clerk's office calls you and asks you to serve on a case, please try to note whether your case begins at 9 o'clock or 10 o'clock.

The duration of your term of service is six months. On my cases, I like to start at 9 o'clock in the morning and then take a recess in the middle of the morning, and then another recess from about [p. 9] 12 o'clock until 1:30, recess in the middle of the afternoon and adjourn for the day at 5 o'clock.

During these recesses, you will want to know where the restrooms are located in this building. There is a men's room at this end of the hall, if you turn right; and the ladies' room is at the other end of the hall, if you turn left. There are also restrooms on the next floor up above this one and in the basement of this building.

You can be excused for overtime parking while you are serving on a jury. If you receive a ticket for overtime parking, bring that to the clerk of the court's office or to the person who is serving as bailiff on your case, and they can have you sign a form to be excused for that.

However, that only protects you if you are in a legal parking space. It doesn't save you if you're next to a fire hydrant or somebody's driveway or someplace like that.

You're entitled to be paid for your service here as jurors. The legislature has set a rate of $30 a day, plus mileage, if you come from more than five miles away. You're entitled to be paid each time you come here for a case, or you can just let your account accumulate and

receive one check at the [p. 10] end of your six months of service.

Naturally, it's easier for the clerk of the court's office if you come in for one check at the end of six months, but if you want, you're entitled to be paid every time you come here.

If you have any personal emergencies or other problems which develop after you've been called to serve on a case here, just contact the clerk of court's office, and they will try to work that out with you.

If you have any problems that arise during a trial, bring that to the attention of the bailiff. It is a great help to the clerk of the court's office if you can keep them advised of your current telephone number where you can be reached, not only so that they can ask you to be here for these cases, but so they can contact you later on in the event a case is postponed for some reason.

Ladies and gentlemen, we'll now select the jury which will try the case before us today, which is the case of the State of Wyoming, plaintiff, versus Sandra Houghton, defendant, Criminal Action No. 12880.

This case was commenced by the filing of a charge or Information by the State which alleges [p. 11] generally, that on or about the 23rd of July, 1995, in Natrona County, Wyoming, the defendant did unlawfully possess a controlled substance, methamphetamine, in a liquid amount greater than three tenths of a gram.

This Information or charge is not evidence and affords no inference of guilt. The defendant has entered a plea of not guilty. Thus, the State has the burden of proof

to establish the defendant's guilt beyond a reasonable doubt. The defendant is presumed to be innocent.

Representing the State in this case is Mr. Mike Blonigen, who is seated at the first table on my right. Representing the defendant is Ms. Monica Sharum, who is seated at the next table. The bailiff is Ms. Wanda Davis. The court reporter is Ms. Sara McDowell, and the deputy clerk of the court is Ms. Anne Volin.

Ms. Volin, would you please swear the jurors in connection with any questions concerning their competency to serve as juror in this case.

(The potential jurors are sworn as to competency.)

Ms. Volin, would you please draw 12 names to form a jury. And as your names are called, please [p. 12] have a seat up here in the jury box, beginning with the two seats from in the top row and then filling up each row from left to right as you face the jury box.

THE CLERK: No. 362, Steve Sword.

THE COURT: Would you move down just one seat, Mr. Sword. Thank you.

THE CLERK: No. 369, Heather Taylor. No. 348, Cleora Sorenson.

THE COURT: Just down at this end please, thank you.

THE CLERK: No. 383, John Vernon.
No. 331, Helen Scott.
No. 259, Michael McLellan.
No. 170, Alice Hodges.
No. 342, Tonia Simmons.

No. 208, Debra Kennedy.
No. 154, Donna Hamilton.
No. 41, Marcia Brock.
No. 266, Becky Meyer.

That's 12 names, Your Honor.

THE COURT: Thank you. Is there anyone here for jury service that was not present when we called the role of the jurors? Okay, thank you.

THE BAILIFF: This lady here was not –

[p. 13] THE COURT: Oh, you were not here for the role call?

(The potential juror shook her head.)

THE COURT: All right. Were you here for the matter of qualifications of jurors?

(The potential juror shook her head.)

THE COURT: Swear her to answer those questions then, please.

(The potential juror is sworn to answer truthfully as to qualifications.)

THE COURT: There are certain qualifications you must meet to serve as a juror in Wyoming. Those are that you be a citizen of the United States, over the age of 17, a resident of the state of Wyoming and the county of Natrona for at least 90 days before you were selected as a juror; that you be in possession of your natural faculties, of ordinary intelligence, without mental or physical infirmity preventing satisfactory jury service; that you have a sufficient knowledge of the English language, and that

you have not previously been convicted of a felony. Do you meet those qualifications?

MS. KENNEDY: Yes, I do.

THE COURT: Would you swear her to serve this term, Mrs. Volin.

[p. 14] THE CLERK: Yes, Your Honor.

(The potential juror is sworn.)

THE COURT: Were you here for the other oaths to answer the questions for jurors in this case.

MS. KENNEDY: No.

(The potential juror is again sworn.)

THE COURT: Mr. Blonigen, do you wish to question the jurors?

MR. BLONIGEN: Thank you, Your Honor. My questions will be very short today. I've been on jury duty before, and ever since that, I decided that fewer questions is probably better than a lot of questions. But there are some questions I would like to ask you today.

You are probably the first jury who will sit in this state on some new drug laws, which were put into effect on July 1st. There was a lot of news coverage of those. I don't know if any of you recall that, but I am going to be asking you some questions about your feelings about drug laws and about people who may use drugs.

And if any of these reach a personal level, where you feel you would be more comfortable talking with the judge up at the bench, that's fine.

[p. 15] Otherwise, I will have just a few questions outside of that.

The defendant in this case is charged with possession of methamphetamine, sometimes called on the street "crank." Have any of you read any articles in the Casper paper in the last year talking about methamphetamine or crank in Casper?

Okay. There has been some articles on that. Do any of you believe that the state should decriminalize the use of drugs? Legalize the use of drugs?

Do any of you feel that we spend too much time, too much money or effort enforcing drug laws?

This case will involve an allegation that involves a drug in its liquid form; that is, in injectable form.

Does the fact that this drug involves the use of intravenous tools, syringes, things like that, bother any of you to the extent that it might bother you considering the case?

Have any of you had a personal experience either on your own, perhaps a loved one, who had a problem with methamphetamine, to the degree that you think it might affect your ability to sit fairly in this case?

[p. 16] Have any of you had any experience – let me ask you this; do any of you have close friends or relatives that have used the drug methamphetamine that you know of?

Mr. Vernon, I am going to pick on you a little bit because I recognize you, and that's the way it goes, right? Certainly, you have seen this problem in the community?

MR. VERNON: Yes, I have.

MR. BLONIGEN: Based on your experience in the counseling area, do you feel that that will affect your ability to consider this case fairly?

MR. VERNON: No, I don't.

MR. BLONIGEN: I take it you have had some exposure to methamphetamine over the years in your occupation.

MR. VERNON: Yes.

MR. BLONIGEN: Do you know the defendant in the case, Sandra Houghton?

MR. VERNON: Not that I know of.

MR. BLONIGEN: Do you know Ms. Sharum, her attorney?

MR. VERNON: No.

MR. BLONIGEN: Do any of you know Ms. Sharum or the defendant, Ms. Houghton?

[p. 17] Do any of you know Officer Baldwin here with me today? He was the arresting officer on this.

MS. KENNEDY: Yes.

MR. BLONIGEN: All right. Is there anything about that knowledge of him that would affect your ability to sit fairly in this case?

MS. KENNEDY: No, we go to church together.

MR. BLONIGEN: Okay. Anybody else know Officer Baldwin? There might be another highway patrolman testify, a Mr. Mizell. Do any of you know him?

Chris Peters, he's with the DCI, Central Drug Enforcement Task Force Team here, he's from Douglas actually. Do any of you know Chris?

And the other witness will be a chemist from the state lab, George Angelo. Do any of you know him?

Now, have all of you heard the phrase that you're entitled to be proven guilty beyond a reasonable doubt? Is there anybody here that disagrees with that?

Is there anybody here who cannot find somebody guilty, if they were shown to be guilty beyond a reasonable doubt?

Does anybody have a moral or personal [p. 18] problem with passing judgment on other people? Because that's what a juror is asked to do. It's asked to find certain facts to be true or not true, and that sometimes bothers people. Does anybody feel like that on this panel? Yes, sir.

MR. SWORD: I do.

MR. BLONIGEN: It's troublesome to sit there and say – and make a decision about somebody else's life.

MR. SWORD: Right.

MR. BLONIGEN: I believe I saw that you have been on jury duty before?

MR. SWORD: Two times.

MR. BLONIGEN: Was that here in Casper?

MR. SWORD: Yes.

MR. BLONIGEN: What kind of cases were they?

MR. SWORD: I was called for a drug case - not a drug case, but a drinking case. I was not called.

MR. BLONIGEN: Did you actually serve then?

MR. SWORD: No.

MR. BLONIGEN: Do you think there's anything about that - I mean it is not a pleasant duty, certainly, to sit on cases like this. But is it something that would make you unable to reach a [p. 19] conclusion based solely on the evidence, because you are reluctant to pass a verdict?

MR. SWORD: No.

MR. BLONIGEN: Have you had exposure to the people you work with or anything like that involving these kinds of drugs?

MR. SWORD: I've had exposure with people that do drugs, yes.

MR. BLONIGEN: Okay. Anything about that that would lead you to be biased one way or the other in this case?

MR. SWORD: Yes.

MR. BLONIGEN: Okay. So do you think it would affect your ability to sit as a fair juror?

MR. SWORD: No.

MR. BLONIGEN: If I could ask you, what generally is that bias you think you have?

MR. SWORD: I am an electrician, and we have drug testing when we go from different company to different company. And the people that I know that do

drugs are able to go to work, and they somehow or other get past the drug test.

MR. BLONIGEN: It gives you concerns about your safety sometimes?

MR. SWORD: Yes, it does.

[p. 20] MR. BLONIGEN: Anything about that that will affect the way you look at this defendant, who is charged with possession of drugs?

MR. SWORD: No.

MR. BLONIGEN: I have a question for all of you, and that is if we are charging somebody with possession, to show somebody possesses a drug, you don't have to show they own it, simply that they possess it. Do any of you feel that simple possession of drugs should not be against the law?

Do you all agree that anybody charged with a crime – I mean anybody, no matter what the state of the evidence is against them – is entitled to their day in court, a fair trial? Anybody have any problem with that?

There has been some talk in recent years that jurors should be able to ignore the law, if they don't feel that it should be applied in a certain case. Do any of you feel you should be free as a juror to ignore what the judge tells you the law is, if you don't like the result in a certain case?

Do any of you feel you should be able to overrule the law and say, well, that's what the law says, but I am not going to apply it in this [p. 21] situation?

Can any of you think of any reason that I might ask about, why any of you couldn't be a fair juror in this case? Any reason at all that maybe something I haven't asked, that maybe you think you shouldn't be sitting on this kind of case? Anything at all from any of you?

That's all the questions I have, Your Honor.

THE COURT: Ms. Sharum.

MS. SHARUM: Hi. My name is Monica Sharum, and I am the counsel for the defendant here today. I am going to be a little bit nervous. And the defendant here, she's depending on me, and I may stammer a little bit and stutter. But that shouldn't make any of you think any less of my client. It's not going to bother any of you if I get nervous and I shake?

I want to talk to a couple of you. Mr. Vernon, is that how you pronounce your last name? My last name starts with an S too, and everybody messes it up. Mr. Blonigen indicated that you knew him?

MR. VERNON: Yes, I do.

MS. SHARUM: How do you know him?

[p. 22] MR. VERNON: Just at times he – the program that I work for – I work for Mercer House. And we've just had dealings with the district attorney's office. Mr. Blonigen has been active in the United Way. We're a United Way agency, and we have what I think of as a sort of nodding acquaintance.

MS. SHARUM: A trial is kind of like a race. I mean, we all have to start at the same starting gate, and nobody can start just a little bit ahead of anybody else.

Do you think the fact that you know him might let you – like, give him just a little bit more credibility because you know him and you have met him before?

MR. VERNON: I don't believe I would give him more credibility because of that.

MS. SHARUM: Ms. Simmons, you also stated that you knew Officer Baldwin. Do you think that will affect you, the fact that you know him? Do you think you would be likely to listen to him a little more carefully or to give him more credibility?

MS. KENNEDY: I am Debra Kennedy.

MS. SHARUM: Oh, I'm sorry.

MS. KENNEDY: No, that will not affect me.

MS. SHARUM: You don't think that the fact that you've met him before, that will not have any [p. 23] effect on you at all?

MS. KENNEDY: No.

MS. SHARUM: We will have a lot of testimony here, and you will hear things said about my client. Just because somebody has done something wrong, does that mean that they've done everything wrong, that the State accuses them of? Anybody believe that?

I realize that's a confusing question. Does anybody think that if you did something wrong, you must have done everything wrong? You don't believe that? Somebody may have done part, but not all?

Mr. Blonigen talked to you a little bit about drugs. Do any of you belong to any organizations like D.A.R.E. or anything like that?

MR. MCLELLAN: I am a sixth grade teacher, so we have a D.A.R.E. officer come to our classroom once a week. And my wife is on the local D.A.R.E. board.

MS. SHARUM: Okay. Anybody here assume that just because the police arrested my client – you're involved in an organization too?

MR. VERNON: Yes, I work for Mercer House. One of our roles – and we contract with the state of Wyoming – is to do drug and alcohol education in [p. 24] the community. I am also a member of the Governor's Violent Crime and Drug Abuse Advisory Board. I don't personally believe that either of these would affect my judgment in here, but I think you should know.

MS. SHARUM: Anybody here believe my client's guilty, simply because she's been arrested?

Does everybody here understand that my client doesn't have to prove anything? Ms. Houghton doesn't have to prove anything. The burden of proof rests on the State.

You know, I don't have to bring in the surprise Perry Mason witness that's going to confess on the stand. We don't have to do that. Do you all understand that?

Does anybody believe that if I don't bring in a surprise Perry Mason witness, that my client must be guilty then? If that person doesn't show up?

No further questions, Your Honor.

THE COURT: The Court will now receive the peremptory challenges.

(Ms. Sharum presents her challenge to the Court and counsel.)

THE COURT: Would you call another juror [p. 25] please, Ms. Volin.

THE CLERK: Yes, Your Honor. Number 182, Brenda Hume.

THE COURT: Would you have a seat on this bench up here, Ms. Hume.

MR. BLONIGEN: Could you hear all the questions we were asking earlier?

MS. HUME: Yes.

MR. BLONIGEN: Because I try not to repeat all of them. Did you know any of the people we listed off here today?

MS. HUME: No.

MR. BLONIGEN: Again, the nature of this case involving methamphetamine drug use. Does that give you any concerns about the questions we've asked this morning?

MS. HUME: No.

MR. BLONIGEN: Can you think of any reason why you couldn't be a fair juror in this case?

MS. HUME: No.

MR. BLONIGEN: Have you been on jury service before?

MS. HUME: No.

MR. BLONIGEN: So this is the first time. Do you have any concerns, as we discussed with the one [p. 26] gentleman, about sitting in on this sort of situation and making an important decision like this?

MS. HUME: No.

MR. BLONIGEN: That's all the questions I have, Your Honor.

MS. SHARUM: You heard the questions I asked too. Is it going to bother you that I am nervous?

MS. HUME: No, not at all.

MS. SHARUM: Is it going to bother you if we don't – if we don't present any evidence?

MS. HUME: No.

MS. SHARUM: Would it bother you if my client doesn't testify?

MS. HUME: No.

MS. SHARUM: Would it bother anybody if my client doesn't testify? Do you have any strong feelings about drugs, or do you have any experiences with them?

MS. HUME: Never had any experience, so –

MS. SHARUM: You don't belong to any organizations or anything?

MS. HUME: No.

MS. SHARUM: You understand that my client is presumed innocent; that the burden rests on the [p. 27]

State? Do you have any problem going into this trial with that presumption?

MS. HUME: I understand that.

MS. SHARUM: Do you think that my client must be guilty because she has been arrested?

MS. HUME: No.

MS. SHARUM: If testimony or evidence was presented to suggest that my client may have done something wrong, although not necessarily everything, would you have trouble bringing back a verdict of not guilty, if they didn't show everything?

MS. HUME: No.

MS. SHARUM: No further questions.

THE COURT: Thank you. You can have a seat back out in the audience section again.

(Mr. Blonigen presents his challenge to the Court and counsel.)

(Ms. Sharum presents her challenge to the Court and counsel.)

THE COURT: Would you call another juror please, Ms. Volin.

THE CLERK: Yes, Your Honor. No. 205, Linda Keith.

MR. BLONIGEN: Ms. Keith, did you know any [p. 28] of the people we listed off here this morning?

MS. KEITH: No.

MR. BLONIGEN: I see you had some prior jury service a few years ago?

MS. KEITH: Yep.

MR. BLONIGEN: What kind of case was that?

MS. KEITH: One was a forgery case and one was a traffic accident type of thing.

MR. BLONIGEN: Okay. So you're very familiar about how the judge will instruct you on the law and those things?

MS. KEITH: Yes.

MR. BLONIGEN: Anything about that past experience that would make you reluctant to be a juror again?

MS. KEITH: No.

MR. BLONIGEN: Anything about your occupation – I notice you take care of your elderly parents as well?

MS. KEITH: Yes.

MR. BLONIGEN: Is that a problem if you're here – we believe that this will probably only last a day. Will that create any difficulty for you?

MS. KEITH: No.

MR. BLONIGEN: Can you think of any reason [p. 29] you wouldn't be a fair juror in this case?

MS. KEITH: No.

MR. BLONIGEN: I pass this juror.

MS. SHARUM: Now, you've heard – do you think my client has to prove her innocence to you?

MS. KEITH: No.

MS. SHARUM: You understand the burden of proof rests upon the State?

MS. KEITH: Right.

MS. SHARUM: Do you think that if my client did something wrong, that that necessarily means she did everything wrong?

MS. KEITH: No.

MS. SHARUM: Do you have a problem with if – if my client doesn't take the stand? Would that bother you?

MS. KEITH: No.

MS. SHARUM: Do you have – have you ever been involved in any organizations that have to do with drugs?

MS. KEITH: No, I haven't.

MS. SHARUM: Have you ever been active in the drug movement or anything like that?

MS. KEITH: No.

MS. SHARUM: Have you ever – been reading [p. 30] any newspaper articles about – in the Casper Star, about the question that was asked before?

MS. KEITH: Yes.

MS. SHARUM: When?

MS. KEITH: At the time that the law went into effect.

MS. SHARUM: Back in July you recall reading some articles about that?

MS. KEITH: Right.

MS. SHARUM: No further questions.

THE COURT: Thank you. You can be seated back out there again.

(Mr. Blonigen presents his challenge to the Court and counsel.)

(Ms. Sharum presents her challenge to the Court and counsel.)

THE COURT: Would you call another juror please, Ms. Volin.

THE CLERK: Yes, Your Honor. No. 191, Harold Jensen.

MR. BLONIGEN: Mr. Jensen, did you know any of the people we listed here this morning?

MR. JENSEN: No.

MR. BLONIGEN: How about the type of case this is, would that cause you any special concerns?

[p. 31] MR. JENSEN: Not particularly.

MR. BLONIGEN: Did you read the newspaper articles and things that we had earlier in the year when this law was first passed?

MR. JENSEN: I read a little about it, but I didn't pay much attention to it.

MR. BLONIGEN: All right. Have you ever been close to anybody that had a problem with a drug like this?

MR. JENSEN: No.

MR. BLONIGEN: Anything that you would think would make you an unfair juror in the case?

MR. JENSEN: I can't think of anything offhand.

MR. BLONIGEN: You haven't been on jury duty before?

MR. JENSEN: No, huh-uh.

MR. BLONIGEN: That's all the questions I have, Your Honor.

MS. SHARUM: I am going to ask you some of the same questions I have been asking everybody else.

MR. JENSEN: If you would speak up a little louder, we could hear you better.

MS. SHARUM: I'm sorry. Do you believe that [p. 32] I have to bring in a surprise witness?

MR. JENSEN: Surprise witness? No, I wouldn't say that.

MS. SHARUM: You understand that the burden of proof rests upon the State?

MR. JENSEN: Yes.

MS. SHARUM: And my client doesn't have to prove anything?

MR. JENSEN: Yes.

MS. SHARUM: You understand that – I mean, just because maybe you have done something wrong, that doesn't mean you have done everything wrong?

MR. JENSEN: Oh, yeah.

MS. SHARUM: And that the State has to prove everything? Did you understand all that?

MR. JENSEN: Yeah.

MS. SHARUM: And have you ever been involved in any organizations like D.A.R.E. or anything like that?

MR. JENSEN: Like what?

MS. SHARUM: D.A.R.E.

MR. JENSEN: D.A.R.E.? No. I see, that's that organization, isn't it?

MS. SHARUM: Yeah. And you don't know me, or you don't know Mr. Blonigen?

[p. 33] MR. JENSEN: No, I don't.

THE COURT: Thank you. You can have a seat back out there again.

(Mr. Blonigen presents his challenge to the Court and counsel.)

(Ms. Sharum presents her challenge to the Court and counsel.)

THE COURT: Would you call another juror please, Ms. Volin.

THE CLERK: Yes, Your Honor. No. 44, Audrey Brown.

MR. BLONIGEN: Ms. Brown, I see that you're a counselor. Do you ever deal with these sorts of problems in the area you counsel in?

MS. BROWN: Yes, yes.

MR. BLONIGEN: Have you been counseling in Casper long?

MS. BROWN: Two years this time. I was gone for three years, and I was here three years before that.

MR. BLONIGEN: Okay. From your experience in your work, would you say this is a significant problem in this community?

MS. BROWN: Oh, yes.

MR. BLONIGEN: Anything about the experience [p. 34] you had – through your counseling experiences – that you think would affect your ability to sit impartially in this case?

MS. BROWN: No, I don't think so.

MR. BLONIGEN: Did you know any of the people we listed off?

MS. BROWN: No.

MR. BLONIGEN: And is there any reason you wouldn't be a fair juror that you can think of, from what we talked about here today?

MS. BROWN: No, I can't.

MR. BLONIGEN: That's all the questions I have, Your Honor.

MS. SHARUM: You have been a counselor here, and you're aware of the drug methamphetamine or crank?

MS. BROWN: Uh-huh.

MS. SHARUM: And you don't think – like the analogy I used before, this is like a race. Everybody has to start off on the same playing field. Since you have a lot of knowledge about this, you don't think it would affect you?

MS. BROWN: No, I don't know where my knowledge about it would affect my ability to make a judgment on somebody.

[p. 35] MS. SHARUM: Do you think that maybe because you know a lot about this drug that you might have some feelings about it one way or other?

MS. BROWN: I don't see where my knowledge of the drug would affect my ability to make a judgment here.

MS. SHARUM: Well, – I.

MS. BROWN: I – I guess I am not understanding what you're asking me.

MS. SHARUM: Well, this is a case about this drug. I mean, do you have feelings about this drug? I mean, if you have feelings towards it, do you think it might affect your decision because you've heard of it before?

MS. BROWN: Feelings about it? Like, it's something people shouldn't use, people shouldn't do these sorts of things? Is that what you're asking?

MS. SHARUM: Yes.

MS. BROWN: I suppose there is that sense.

I think that people shouldn't eat too much. I think people shouldn't have outrageous fights with their husbands or wives. I think people shouldn't beat their children. I have those feelings, but I still think I could come to some sort of judgment about it.

MS. SHARUM: Do you think – what I'm asking [p. 36] is, do you think because you know maybe, perhaps a little bit more about this drug than most people, that you might have stronger feelings about it than another person?

MS. BROWN: I don't think so.

MS. SHARUM: You understand that my client doesn't have to prove anything here today?

MS. BROWN: Yes.

MS. SHARUM: And you said you had been a counselor in this community. Have you ever heard of anybody named David Young before?

MS. BROWN: I don't believe so.

MS. SHARUM: What about Vanessa McQueery?

MS. BROWN: I don't believe so.

MS. SHARUM: You're not familiar with those names either?

MS. BROWN: Huh-uh.

MS. SHARUM: Do you feel – I mean, have you ever been involved in the organizations like D.A.R.E. or anything like that?

MS. BROWN: No.

MS. SHARUM: Have you ever been active in any sorts of those organizations?

MS. BROWN: Drug organizations, you mean?

MS. SHARUM: Yeah, yeah.

[p. 37] MS. BROWN: No, huh-uh.

MS. SHARUM: Okay.

MS. BROWN: I've been certified as a drug counselor at one time.

MS. SHARUM: And as a drug counselor, you met and worked with people who have been on drugs?

MS. BROWN: Oh, yes absolutely.

MS. SHARUM: And do you think that could have any impact on your decision-making process? Because you've seen people before who have been on drugs?

MS. BROWN: I don't think so.

MS. SHARUM: You don't think it would have any impact, okay.

No further questions.

THE COURT: Thank you. You can have a seat back out there.

(Mr. Blonigen presents his challenge to the Court and counsel.)

(Ms. Sharum presents her challenge to the Court and counsel.)

THE COURT: Would you call another juror please, Ms. Volin.

THE CLERK: Yes, Your Honor. No. 141, Todd Garriott.

[p. 38] MR. BLONIGEN: Mr. Garriott, did you know any of the people we listed here today?

MR. GARRIOTT: No.

MR. BLONIGEN: What about the nature of this case involving methamphetamine? Does that cause you any concerns?

MR. GARRIOTT: I think I probably would have a bias, because I've seen a lot of my friends destroy their lives over it. And I have lived in this town all my life, and it's rampant. It's like a disease.

MR. BLONIGEN: It is pretty dangerous stuff. You've known people yourself –

MR. GARRIOTT: I've actually tried it myself, sir, and I am ashamed to admit that. But I have tried it, and it's a very, very dangerous drug. And we should do all we can to get it out of the hands of kids and young adults.

MR. BLONIGEN: Do you think that your feelings are so strong that you couldn't sit fairly on this jury? I mean, we still have to prove –

MR. GARRIOTT: I still have to – I've been thinking about that since I've sat here and listened to this, and I really have a problem with that. Because, like I said, I've seen so many people [p. 39] destroy their lives over it that – as far as them having possession, and I – I don't know the facts so I can't say about that. But as far as my feelings of the drug itself, they are pretty strong.

MR. BLONIGEN: And I guess that's my question to you. Can you separate that from the fact that we have to prove that she did possess it?

MR. GARRIOTT: I think I could, yeah.

MR. BLONIGEN: And I ask you because you know whether you had reservations. Because, obviously, you have been thinking about it. But if you think you can set that aside and look at whether she did, in fact, possess it, I suppose that's the real question here.

MR. GARRIOTT: I think I could be impartial –

MR. BLONIGEN: – in that regard?

MR. GARRIOTT: Uh-huh.

MR. BLONIGEN: Okay. Do you know any of the people we listed?

MR. GARRIOTT: No.

MR. BLONIGEN: Other than the concerns you've already told us about, do you have any other concerns about being a fair juror in this case?

MR. GARRIOTT: No.

MR. BLONIGEN: Now, because of the way you [p. 40] feel about the drug, you will still require us to

prove that beyond a reasonable doubt, and it's our burden to prove in this case?

MR. GARRIOTT: Yeah, I understand all that.

MR. BLONIGEN: That's all the questions I have, Your Honor.

MS. SHARUM: You've told us that you have very strong feelings about that drug. You've heard about it. You've seen about it. You said you think you can be objective. But, I mean, do you think this is going to have any effect on you at all that you might be a little more skeptical?

MR. GARRIOTT: You mean as far as the possession charge?

MS. SHARUM: Yeah. As far as these charges go, and as far as my client goes, are you going to give us less credibility because that's the kind of charge we're facing?

MR. GARRIOTT: No.

MS. SHARUM: You don't think it's going to have any effect on you, even though you have very, very strong feelings about this?

MR. GARRIOTT: No. Like I said, I have feelings about the drug itself, but against your client I don't, no.

[p. 41] MS. SHARUM: Would it bother you if you had heard that she has admitted to some part of the allegation; that maybe she's admitted in the past she has used the drug? Would that bother you?

MR. GARRIOTT: No. Because like I said, I've tried it myself, and I – like I said, I don't like to admit that. But I am trying to be honest. So if you ask me directly, I would have to say, yeah.

MS. SHARUM: So you think, like on a race track, you're going to give us a level playing field. If – we are going to start off at the same point in your mind, both me and the district attorney? You don't think that because of your strong feelings you may be apt to give him a little more credit?

MR. GARRIOTT: No.

MS. SHARUM: You don't think you're going to do that?

MR. GARRIOTT: No.

MS. SHARUM: You don't think you're going to have any problems at all?

MR. GARRIOTT: Not as far as a judgment would be concerned, no.

MS. SHARUM: Okay. Now, I asked before, [p. 42] have you ever been involved in any organizations concerning the banning of drugs, like D.A.R.E. or things like that?

MR. GARRIOTT: No.

MS. SHARUM: You stated before that you know a fair amount about this drug. You've tried it before and everything, so you know a little bit about the drug culture I take it?

MR. GARRIOTT: Right.

MS. SHARUM: Do you think – will that have any effect on you?

MR. GARRIOTT: No.

MS. SHARUM: Do you think that's going to make you less or more likely to believe the defense or the prosecution?

MR. GARRIOTT: No.

MS. SHARUM: You don't think it will have any effect at all?

MR. GARRIOTT: No.

MS. SHARUM: Okay. I have no further questions.

THE COURT: Thank you. You can resume your seat out there.

(Mr. Blonigen presents his challenge to the Court and counsel.)

[p. 43] (Ms. Sharum presents her challenge to the Court and counsel.)

THE COURT: Would you call another juror please, Ms. Volin.

THE CLERK: Yes, Your Honor. No. 310, Diane Ready.

MR. BLONIGEN: Ma'am, did you know any of the people we listed off here today?

MS. READY: No.

MR. BLONIGEN: Have you ever known anybody that had a problem with this particular substance?

MS. READY: No.

MR. BLONIGEN: Anything about this kind of case that bothers you and your ability to sit as a fair juror?

(The potential juror shook her head.)

MR. BLONIGEN: Any reason you couldn't serve as a fair juror in this case?

MS. READY: No.

MR. BLONIGEN: That's all the questions I have, Your Honor.

MS. SHARUM: Is it going to bother you that I am a little bit nervous?

MS. READY: No.

MS. SHARUM: It won't bother you at all?

[p. 44] MS. READY: No, if you talk a little louder.

MS. SHARUM: I'm sorry. Is that going to bother you that, apparently, I am talking very softly?

MS. READY: Uh-huh.

MS. SHARUM: Would you hold that against my client?

MS. READY: No.

MS. SHARUM: Now, you live 30 miles out of town now?

MS. READY: Yes.

MS. SHARUM: Is that going to be a hardship on you?

MS. READY: It would be if the weather is bad, because I don't drive when the weather is bad.

MS. SHARUM: As Mr. Blonigen told you, this will probably be a day or day and a half trial. Is that going to –

MS. READY: Well, it depends on if it snows tonight. Because I have a dirt road to get to before I can get on the highway.

MS. SHARUM: I have no idea if it's supposed to snow tonight or not. Have you ever known anybody that uses drugs or anything?

MS. READY: Not that I know of. I don't [p. 45] know if they have or not.

MS. SHARUM: And you don't know anyone who is in this case? You don't know Officer Baldwin or Officer Peters?

MS. READY: No.

MS. SHARUM: Do you think that the defense here has to prove something here, or do you understand that the burden of proof rests solely on the prosecution?

MS. READY: Uh-huh.

MS. SHARUM: And they have all the burden. We don't have to show anything at all.

(The potential juror nodded her head.)

MS. SHARUM: So would it bother you if my client doesn't testify?

MS. READY: No.

MS. SHARUM: Would it bother you if we don't put on any witnesses?

MS. READY: No.

MS. SHARUM: Is it going to bother you that we aren't likely to come up with that surprise Perry Mason witness?

MS. READY: No.

MS. SHARUM: No further questions.

THE COURT: Thank you. You can be seated [p. 46] out there again.

(Mr. Blonigen presents his challenge to the Court and counsel.)

(Ms. Sharum presents her challenge to the Court an counsel.)

THE COURT: Would you call another witness please, Ms. Volin.

THE CLERK: Yes, Your Honor. No. 151, Patricia Gunderson.

MR. BLONIGEN: I see you were on jury duty before?

MS. GUNDERSON: Yes.

MR. BLONIGEN: What kind of case was that?

MS. GUNDERSON: A traffic violation.

MR. BLONIGEN: Okay. Any other jury duty other than that?

(The prospective juror shook her head.)

MR. BLONIGEN: Same questions that we had for all the other folks. Did you know any of the people we listed off here today?

(The prospective juror shook her head.)

MR. BLONIGEN: Any questions about the kind of case it is?

MS. GUNDERSON: No.

MR. BLONIGEN: Do you have strong feelings [p. 47] one way or other about drug cases and the Government's involvement in drug enforcement?

MS. GUNDERSON: No.

MR. BLONIGEN: Can you think of any reason you couldn't be a fair juror in this case?

MS. GUNDERSON: No.

MR. BLONIGEN: That's all the questions I have, Your Honor.

MS. SHARUM: Do you understand that the State has the burden of proof? My client doesn't have to prove anything?

MS. GUNDERSON: Right.

MS. SHARUM: Is that going to bother you if my client doesn't testify?

MS. GUNDERSON: No.

MS. SHARUM: Is it going to bother you if a defense is not put on?

MS. GUNDERSON: No.

MS. SHARUM: It wouldn't bother you at all? It won't bother you?

MS. GUNDERSON: No. I mean, obviously it makes a difference, but can I put that aside, yes.

MS. SHARUM: What do you mean by you think it makes a difference? How do vou think it makes a difference?

[p. 48] MS. GUNDERSON: Because it may or may not happen. The continuum is very broad for the kind of evidence that they may or may not present. So if, for instance, the case presented evidence that was marginally believable, I think it would be in your best interest to put something on.

MS. SHARUM: But you understand that we don't have to do that?

MS. GUNDERSON: Absolutely.

MS. SHARUM: And if my client doesn't want to do that, if she's nervous about talking in public or anything like that, she doesn't have to do that?

MS. GUNDERSON: Sure.

MS. SHARUM: And do you understand that if the State puts on a marginal case, and you don't think it meets reasonable doubt, whether or not I put on a defense makes no difference?

MS. GUNDERSON: Yes, I understand the difference between a preponderance of the evidence and simply a majority of evidence.

MS. SHARUM: And you understand the standard here is reasonable doubt?

MS. GUNDERSON: Yes, absolutely.

MS. SHARUM: And you would have to find that standard being reasonable doubt?

[p. 49] MS. GUNDERSON: Absolutely.

MS. SHARUM: You understand that my client is presumed innocent?

MS. GUNDERSON: Uh-huh.

MS. SHARUM: Now, I notice you have two small kids?

MS. GUNDERSON: Uh-huh.

MS. SHARUM: Ages 7 and 9?

MS. GUNDERSON: Yes.

MS. SHARUM: Is that going to be a hardship on you?

MS. GUNDERSON: Actually, my nine-year-old is sick today, but my mother is with her.

MS. SHARUM: So that won't be a hardship on you?

MS. GUNDERSON: I don't believe so.

MS. SHARUM: I noticed it could be a hardship?

MS. GUNDERSON: Well, I mean, it's not going to be a nine-month trial, right?

MS. SHARUM: No, it won't be a nine-month trial. Do you think you can be fair and, and impartial on this?

MS. GUNDERSON: Yes.

MS. SHARUM: Do you have any strong feelings [p. 50] about drugs?

MS. GUNDERSON: Generally?

MS. SHARUM: Yeah, drugs generally?

MS. GUNDERSON: Insofar as I have two small children that eventually might have to deal with that problem. I have those kinds of feelings. I think it's probably common.

MS. SHARUM: Have you ever been involved in any organizations like D.A.R.E. or M.A.D.?

MS. GUNDERSON: I've given money to both D.A.R.E. and M.A.D., but I have not been actively involved on a personal level.

MS. SHARUM: Do you think that if a person admits she does something wrong, that she must have done everything the State says she did wrong?

MS. GUNDERSON: No, absolutely not. People repent and change all the time.

MS. SHARUM: So if somebody says, "I did this wrong, but I didn't do this." Okay, then you don't believe that means she did everything?

MS. GUNDERSON: Absolutely.

MS. SHARUM: No further questions.

THE COURT: Thanks. You can be seated back out there again.

(Mr. Blonigen presents his challenge to the [p. 51] Court and counsel.)

(Ms. Sharum presents her challenge to the Court and counsel.)

THE COURT: Would the following persons now seated in the jury box please have a seat out in the audience section of the courtroom, and when I call your names, I can excuse you in a few minutes.

Mr. Sword, Mr. Vernon, Ms. Scott, Mr. McLellan and Ms. Kennedy.

THE COURT: Ms. Ready, would you please take the seat at the top row on the left-hand side. Ms. Hume, would you please take the first vacant seat on the left, in the second row. Ms. Gunderson, would you please take the seat next to her. Ms. Keith, would you please take the next vacant seat in that row. Mr. Jensen, would you please take the vacant seat here in the front row.

Do you accept the jury, Mr. Blonigen?

MR. BLONIGEN: The State accepts the jury, Your Honor.

THE COURT: Do you, Ms. Sharum?

MS. SHARUM: The defense accepts the jury, Your Honor.

THE COURT: Would you please swear the jurors to faithfully hear and try the case, [p. 52] Ms. Volin.

THE CLERK: Yes, Your Honor.

(The jury is sworn to try the case.)

THE COURT: Please be seated. Ms. Davis, would you please come forward to be sworn to take charge of the jury during the recesses.

(The bailiff is sworn by the clerk.)

THE COURT: Ladies and gentlemen, before we take a recess here, I want to thank the remaining members of our jury panel. For those of you in the audience section of the courtroom, it will not be necessary for you to return for any further proceedings in this case.

We appreciate your patience and cooperation in helping us to select the jury here. For those of you on the jury, if you will go with Ms. Davis during the recess, she will show you where the jury room is.

We will be in recess for about 20 minutes.

(The jury leaves the courtroom, and the morning recess is taken at 10:02 a.m.)

(Back on the record at 10:30 a.m.)

THE COURT: I would like to read to you a general instruction before the commencement of this trial.

[p. 53] (The Court reads general Instruction No. 1 to the jury at this time.)

THE COURT: Do you wish to make an opening statement, Mr. Blonigen?

MR. BLONIGEN: Yes, Your Honor.

OPENING STATEMENT

BY MR. BLONIGEN:

This case isn't about the Calley Cartel or a huge drug dealer, but it's about people that make those businesses work. It's about customers.

On July 23, 1995, Sandra Houghton was a customer. Officer Baldwin, on routine duty within Natrona County, stopped a car occupied by three people. It was driven by a man named David Young. The defendant was a passenger in that car, and so was a 16-year-old female, a minor.

Officer Baldwin observed something unusual almost immediately, because the driver, Mr. Young, had a syringe in his pocket, the kind commonly used for taking illegal drugs. It's 1:15 in the morning. He has the people get out of the car. Based upon his observation of that syringe, he conducted a search of that vehicle.

And the defendant's possession will be clearly proved by very simple evidence; one, the [p. 54] defendant was in the car, and two, her purse was located in that car during that search. The purse was closed.

The defendant gave her name as Sandra James, as you'll hear from the evidence. The officer searched the purse first, finding the identification of Sandra Houghton. No other individual, only Sandra Houghton.

When he asked her, "Why did you tell me your name was Sandra James?" She said, "In case things go bad here." And very soon they did. And you will hear the officer testify he then searched the remainder of the purse. One black wallet with a syringe with a residue in

it, about 10 cc's, and a vial containing 20 to 30 cc's of what was later tested to be methamphetamine.

In another brown container he found yet another syringe, this time with almost 60 cc's of what later proved to be liquid methamphetamine.

Now, the defendant, while the search is being made, claims the black package – which you will see – is hers. She says – when he pulls out the brown one – she goes, "Oh, that's not mine."

This is what she claims. But it's in her possession. It's in her purse with the other items, [p. 55] and you'll hear that the syringe found with the 60 cc's is the same as the syringe that was found in the wallet that she said was hers.

Now, as you heard the judge read the statute this morning, Felony Possession requires .3 of a gram or $^{3}/_{10}$'s of a gram. You will find that in this case that Ms. Houghton was in possession that day of almost $^{8}/_{10}$'s of a gram, more than twice as much as the statute requires.

She stated initially to Officer Baldwin that her name was Sandra James, and she changed that. And when they found the syringe in her purse, the officer also noted that she had track marks on her arm. She was nervous and giving a false name.

At first she claimed, "Part is mine and part is not." Regardless, it's all in her possession. But the next week she talked to the Division of Criminal Investigation.

MS. SHARUM: Objection Your Honor. I think – can we approach the bench?

THE COURT: All right.

(The following discussion was held at the judge's bench, out of the hearing of the jury.)

MS. SHARUM: Your Honor, I think Mr. Blonigen's giving an argumentative opening [p. 56] statement about the talks the defendant had with the DCI, and his sole purpose here is to inflame the jury. Therefore. I think these talks should not be admissible, Your Honor.

MR. BLONIGEN: Judge Sullins already ruled them admissible.

MS. SHARUM: And I've already filed written notice of an objection to that, Your Honor.

THE COURT: I'll overrule the objection. You can proceed, Mr. Blonigen.

(The following proceedings were held in open court, with the jury present.)

MR. BLONIGEN: This defendant, on August 1, 1995, confessed that, in fact, the methamphetamine was hers, that she knew what it was, and she intended to use it.

Ladies and gentlemen, every defendant in this country is entitled to proof beyond a reasonable doubt. And they are all entitled to a trial. But the State believes that once you review this evidence of the items directly found in her purse, directly identified by her, and later admitted to be hers, which she intended to use, that there will be no reasonable doubt about Ms. Houghton's guilt in this case.

[p. 57] OPENING STATEMENT

BY MS. SHARUM:

Ladies and gentlemen of the jury, you're going hear about this case, and you will hear a lot of things about it. This is sort of like a jigsaw puzzle. You will get little bits and pieces at a time, and then you are going to put it all together.

And it will be very important that you pay very close attention to what goes on here today and listen to what everybody says here today. Listen to me and listen to all the witnesses. It's very important that you listen to everybody.

Now, the State's told you that they will produce evidence that says that there was a traffic stop. And there was a traffic stop. They will tell you about the traffic stop, and they will tell you about what occurred at this traffic stop. And there were three people in this car. There was one male and two females, and there was a purse in this car. They have a small car, and anybody could have had access to that purse, and anybody could have done it.

And you have heard the State tell you that there will be a situation where you then hear about [p. 58] a false name. Well, my client got scared. That may not be a good thing to do, but she did. She got scared at this traffic stop, and I guess everybody can get scared sometimes when the police come up to them.

You are also going to hear about statements against her. You will hear about things she said happened, and you will hear she admitted she had done something wrong here. She gave a false name. And she admitted to

another thing. She admitted the syringe was hers, but she looked at that and said, "That is not mine."

Now, when she is making these statements, she has no idea what effect this is going to have on her. She doesn't know if this will make this better or worse. She really doesn't. She doesn't know exactly what she's confessing to. She just says, "This one is mine, this one isn't." She's simply telling them the truth about which one. She said which one she possessed.

And the question then becomes, did she possess the .3 grams? The syringe that she says is hers doesn't equal that. That's an important factor to keep in mind. The law is technical in this area. And you will have to think about that very [p. 59] importantly. Because although it is technical, those technicalities mean something. They're very, very important. And you will have to pay attention.

They have to prove every element and weight it as an element. They will have to prove that. They will have to prove possession and prove all those elements here today.

Like I said, this is like a jigsaw puzzle, and there is going to be a lot of pieces. And this is a very important job for you. Because this is very serious. I mean, anytime you're charged with a crime, this is a serious, serious situation.

This is very, very serious. This means a lot, and you're asked to pay attention to those pieces and to listen very carefully, and listen to us very carefully today. Thank you.

THE COURT: Mr. Blonigen.

MR. BLONIGEN: We will call Officer Baldwin, Your Honor.

ROBERT BALDWIN,

having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BLONIGEN:

Q Would you state your name for the record, [p. 60] please.

A Robert Delane Baldwin.

Q Where are you employed, Mr. Baldwin?

A I'm employed in Casper, with the Wyoming Highway Patrol.

Q How long have you been a police officer?

A Approximately seven and a half years.

Q In addition to your training with the highway patrol, did you receive any special training involving narcotics investigation?

A Yes, I did.

Q Could you explain for us briefly when and where that was?

A In the fall of 1988, when I was employed, I received eight hours of drug introduction training at the Wyoming Law Enforcement Academy.

In 1993 I had an eight-hour refresher course at the Wyoming Law Enforcement Academy, and then in April

of this year, I received a seven-hour drug training course in Guernsey, Wyoming.

Q Now, were you on duty on July 23, 1995?

A Yes, I was.

Q At approximately 1:00 a.m. that morning, did you have contact with a vehicle driven by David Young?

[p. 61] A Yes, I did.

Q Where were you when you first observed the Young vehicle?

A I was assisting another officer at a traffic stop on the interstate between Bryan Stock Trail and the Evansville exit. We were eastbound on a traffic stop.

Q You were heading towards Douglas then?

A That's correct.

Q Who was that officer?

A Officer Troy Mizell.

Q What drew your attention to the Young vehicle?

A The vehicle was exceeding the speed limit when it went by. And after it passed, the brake lights came on, and there was one brake light that worked.

Q Which direction was that vehicle headed?

A It was headed east.

Q What sort of vehicle was it?

A It was a 1977 Cadillac.

Q And Ms. Sharum has described that as a small vehicle. Is that a small vehicle?

A No, it is not.

Q What did you do at that point in time?

[p. 62] A We were clearing – the other officer and I were nearly completed with the other traffic stop, and I got in my vehicle and went to catch up to the vehicle that passed me with some equipment violations.

Q Did you observe the path the vehicle took?

A Yes, I did.

Q Could you describe that for us, please?

A The car went, as I said, eastbound on I-25, taking the Evansville exit and went to the traffic light at the intersection of Wyoming Boulevard, next to the truck stop. It stopped at the light and made a left-hand turn.

I followed the vehicle underneath the interstate through the traffic light that is there. I turned on my emergency lights and stopped the vehicle.

Q Where did you turn on your emergency lights?

A Just as we were going through the traffic light, on the north side of the interstate.

Q Did the vehicle pull over?

A Yes, it did.

Q Where did the vehicle pull over?

A It pulled over, making a right-hand turn into the Mini-Mart parking lot.

[p. 63] Q Is that entire area you have described, within Natrona County?

A Yes, it is.

Q Upon your pursuing this vehicle, and through the time you stopped it, did you see any unusual movements or sudden movements within the vehicle itself?

A No, I did not.

Q Upon stopping the vehicle, who exited first, you or the driver?

A I did.

Q Did anyone exit from the other vehicle?

A Not at that point, no.

Q What did you do at that point?

A I approached the driver of the vehicle to obtain a driver's license, registration and insurance information.

Q Did you identify that driver?

A Yes, I did.

Q As whom?

A David Young.

Q Were there any passengers in the car?

A Yes, there were.

Q Did you identify the passengers?

A Not at that point, I didn't.

[p. 64] Q When you stop a vehicle like this, do you light up that vehicle?

A Yes, I do.

Q How do you do that?

A I have take-down lights that are part of the light bar unit itself, and I also have a spotlight on the left-hand side door post, and I also carry a flashlight.

Q After you lit up the car again, until you contacted the driver, did you see any unusual or sudden movements within the vehicle itself?

A No, I did not.

Q You stated you identified the driver as David Young. When you identified the driver, did you notice anything unusual about him?

A Yes, I did.

Q What was that?

A In his left front shirt pocket there was a hypodermic syringe that was visible in the inside of the pocket.

Q Why was that significant to you?

A Based on my training, it is commonly used in the taking of illegal drugs.

Q At that point in time, what did you do?

A Shortly before that, the other officers – [p. 65] there was an Officer David Evans that also came to assist me, and Officer Mizell came after he completed his stop.

I went to the back of the suspect's vehicle and informed him that I had seen the syringe in his shirt pocket, and I needed to get some gloves to put on my

hands. And I was going to question him as to the use of the syringe.

Q At this time, had you obtained Mr. Young's license and registration?

A Yes, I had.

Q Who provided that to you?

A Mr. Young.

Q While you retrieved your gloves, was anyone watching the occupants in the vehicle?

A Yes, they were.

Q Who was that?

A Officer Mizell.

Q During this period of time, then, you went and you got your gloves from your car; is that correct?

A That's correct.

Q How far from the suspect vehicle are your gloves?

A Fifteen feet, approximately.

[p. 66] Q Had you identified the other occupants of the vehicle at this time?

A No, I had not.

Q Okay. What did you do after retrieving your gloves?

A I returned to David Young and asked him to get out of the vehicle, and that I knew he had a syringe in his shirt pocket.

I asked him to remove the syringe and to place it on the hood of the car. He did so, and I asked him what he used the syringe for, and he advised that he used it to take drugs.

Q Had you conducted any search at this point in time?

A No, I had not.

Q Where was Mr. Young then, after you retrieved the syringe and had this short conversation with him?

A He was standing outside the vehicle.

Q Where were the two passengers?

A Inside the vehicle..

Q What did you do at that point in time then?

A The other officers removed the other two occupants of the vehicle. There were two females. And I continued to – I searched the rest of [p. 67] Mr. Young to see if there were any other drugs or weapons.

Q Was the defendant, Sandra Houghton, one of those passengers?

A Yes, she was.

Q Could you identify her, if she is in this courtroom today, please?

A She's in the pink sweater, sitting at the defendant's table.

MR. BLONIGEN: May the record reflect he's identified the defendant, Your Honor.

THE COURT: The record may so indicate.

Q (By Mr. Blonigen) During this contact, did she identify herself in any manner?

A Yes, she did.

Q And how was that?

A She identified herself as Sandra James, with a date of birth of November 23, 1944.

Q Now, did she provide any identification to that effect?

A No, it was a verbal identification.

Q Did you ask her for identification at that time, if you recall?

A She was asked for identification and said she did not have any.

[p. 68] Q Where are the two passengers then at this time? You stated you already had Mr. Young out of the car, where are the two female passengers at this time?

A At this point, all of the occupants were outside the vehicle.

Q What did you do at that point?

A After obtaining the information from the occupants, a pat-down was performed. And that was not done specifically by me, but the other officers assisted, to see if there were any other weapons, for our safety, while I searched vehicle. And we did what we call an NCIC or criminal history check to see if any of the people were wanted, and we were waiting for the results of that.

Q And I take it that was negative?

A That's correct.

Q Why did you search the car, Officer Baldwin?

A Because I found a syringe commonly used for the use of illegal drugs. The driver stated that he used it to take illegal drugs, and I had probable cause to believe there may be further drugs inside the vehicle.

Q You stated all three persons were out of the vehicle then; is that correct?

[p. 69] MS. SHARUM: Objection. This is leading the witness, Your Honor.

MR. BLONIGEN: He's already testified to this, Your Honor. I don't think it's leading.

THE COURT: I'll overrule the objection.

Q (By Mr. Blonigen) Did any of them take anything out of the car, that you saw?

A No, they did not.

Q Which portion of the vehicle did you search first?

A I searched the front driver's side of the vehicle.

Q Did you find anything?

A No, I did not.

Q What portion did you search next?

A I searched the driver's-side back seat and floor area.

Q And in the driver's-side back seat or floor area, did you find anything?

A Yes, I did.

Q What was that?

A I found approximately a one and a half foot square, cloth lady's purse.

Q Was it closed?

A Yes, it was.

[p. 70] Q Now, I will come back to the purse in a moment, Officer. Did you search the rest of the vehicle as well?

A Yes, I did.

Q And in the interior of that vehicle, did you find anything else?

A No, I didn't.

Q Going back to the purse, where was it located again?

A It was in the back seat.

Q You indicated it was closed. Was it upright?

A Yes, it was.

Q Was it on the seat or on the floorboard?

A It was on the seat approximately – pretty much centered in the back seat.

Q What did you do with the purse at that point in time?

A I opened the purse, and I observed the contents and removed a wallet from the larger purse.

Q Did you look in that wallet?

A Yes, I did.

Q Did you find any indication in the wallet of who the wallet and the purse belonged to?

A Yes, I did.

[p. 71] Q And who was that?

A In that wallet was a driver's license with the name Sandra K. Houghton and further driver's license information on it.

Q Was there a picture on the driver's license?

A Yes, there was.

Q Did you recognize the picture on the driver's license?

A Yes, I did.

Q As whom?

A It was the defendant's driver's license.

Q When you found that, what did you do?

A I stood up from in the vehicle and I said, "Sandra, come here."

Q Was she in custody at this time?

A No, she was not.

Q What happened then?

A She walked over to driver's side of the vehicle, and I showed the driver's license to her and asked if it was hers, and she said, "Yes."

Q Did you have any further conversation with her at that time?

A Yes. I asked her why she gave a false name, and she advised me that was in case things went bad. And I asked "What things?" And she didn't [p. 72] answer.

Q What did you do at that point in time?

A I took another small wallet bag out of the larger purse, and I opened it up.

Q Okay. What color was this container?

A It was brown.

Q Now, where was the defendant when you were going through these items in her purse?

A Approximately three feet from where I was, with another officer there.

Q Could she see what you were doing there, if you know?

A Yes, she could.

Q And you stated you removed an object from the purse; is that correct?

MS. SHARUM: Objection. May we approach?

(The following discussion was held at the judge's bench, out of the hearing of the jury.)

MS. SHARUM: I would like to renew my objection to the admissibility of this evidence which is about to be brought in, on the grounds of the Fourth Amendment in that it was an illegal search.

THE COURT: I'll overrule the objection.

(The following proceedings are held in open [p. 73] court, with the jury present.)

Q (By Mr. Blonigen) Officer, I direct your attention to the contents of the manila envelope marked State's Exhibit No. 1. Would you observe the contents of that envelope, please.

(The witness complied.)

Q (By Mr. Blonigen) If you would remove each of the two items in there and place them in front of you – you can remain seated if you would like. And for purposes of the record, item one of the two items he removed – there is one black container and one brown container. Is either one of those containers, the one –

MS. SHARUM: Objection Your Honor.

(The following conversation was held at the judge's bench, out of the hearing of the jury.)

MS. SHARUM: There has been no foundation as to putting in these items into evidence or even as to what he's about to identify. He's doing this to prejudice the jury, Your Honor.

MR. BLONIGEN: Your Honor, he's already identified these items, and we will lay further foundation. I would note for the record, that these exhibits are a black wallet and a shaving kit. There are no items here that will cause any [p. 74] prejudice. He's simply going to identify them at this time.

THE COURT: I'll overrule the objection.

(The following proceedings are held in open court, with the jury present.)

Q (By Mr. Blonigen) Sir, turning your attention, first, to the black wallet. Do you recognize that?

A Yes, I do.

Q And what do you recognize it as?

A This is the – actually, this is the third bag I removed from the larger purse.

Q Is it in the same condition as when you removed it from the purse on the morning of the 23rd?

A Yes, it is.

Q And what is the other item?

A This is a brown bag, the second bag I removed from the larger purse.

Q Now, is that in the same condition as when you seized it that evening?

A Yes, it is.

Q Whose possession have these items been in since the time they were seized?

A These have been in my possession.

[p. 75] Q Did these items themselves ever go to the crime lab?

A No, they did not.

Q Now, you indicated earlier in your testimony you discovered a driver's license; is that correct?

A That's correct.

Q Was the driver's license in either one of the two items you've just identified?

A No, it was not.

Q It was in a separate container?

A Yes, it was.

Q Was any contraband or suspected contraband found in that container with the driver's license?

A No, it was not.

Q You stated that you then continued to search the purse after that time; is that correct?

A That's correct.

Q What was the next item that you removed from the purse?

A This brown bag.

Q Upon removing the brown bag, did the defendant make any comment?

A Yes, she did.

Q What was that?

A That this was not hers.

[p. 76] Q Did she state anything else at that time?

A Not at that point, no.

Q What did you do with that item?

A I opened up – I unzipped the bag – I was unzipping the bag and she said, "That's not mine." And I

continued opening up the bag and removed a plastic container, similar to one that holds a toothbrush, and I removed that from the bag.

Q Was there anything within that container?

A Yes, there was.

Q What was that?

A There was a syringe inside that, containing liquid of approximately 60cc's.

Q Was there anything else in the brown container, other than the toothpaste holder that you described?

A There was quite a bit of other drug paraphernalia, syringes, et cetera, razor blades.

Q Were the syringes new or used, if you could tell?

A Used.

Q Did any of them have any liquid in them?

A Just the one that had the 60cc's.

Q And you observed that?

A Yes, I did.

[p. 77] Q Other than the other drug paraphernalia that you found in that item, did you find anything else that was subsequently tested at the Wyoming State Crime Lab?

A No, I did not.

Q Now, after you removed the syringe, were there any comments made by the defendant?

A I asked Ms. Houghton whose items they were, if they were not hers.

Q Did she respond to you?

A She said she could not tell me.

Q What did you do next?

A I approached the defendant and looked on her arms. I found track marks there and then placed her under arrest.

Q Now, you refer to track marks. Could you explain a little more fully what you found at that time?

A They are pin marks in her arm. They were kind of a bright red, which would indicate that the needle had been injected into her arm.

Q Did they appear to be of recent origin?

A Yes, they did.

Q Did you continue to search the contents of the purse?

[p. 78] A Yes, I did.

Q What other contents, if any, did you observe at that time?

A I removed a smaller black bag.

Q Did either the smaller black bag or the brown bag have any papers indicating any sort of identification whatsoever?

A No, they did not.

Q How would you describe how full they were?

A Relatively full. You could stuff some more things in there, but they were relatively full.

Q Full of what?

A Syringes, spoons, razor blades, drug paraphernalia.

Q Now, referring to the brown kit, are there still items in there that, in fact, that you found that night?

A Yes, there are.

Q Would you open the bag please, Officer.

(The witness complied.)

Q (By Mr. Blonigen) Now, there is a plastic cylindrical object there. Can you pull that out and hold that up please? What is that?

A This is what I found, the loaded syringe that had approximately 60cc's in it.

[p. 79] MS. SHARUM: Objection, Your Honor.

THE COURT: You can state your objection from there.

MS. SHARUM: I think what's about to be shown is highly prejudicial in this case.

THE COURT: I'll overrule the objection.

Q (By Mr. Blonigen) What else is in there?

A Four spoons.

Q From your training and experience, can you tell us what the spoons are commonly used for?

A For mixing a dried methamphetamine with liquid, so that it makes it so it's injectable.

Q How is methamphetamine usually found on the street? What state is it in?

A It's usually in kind of an off-white substance. If it's ground, it is powdery; if it's not, it's called a rock form.

Q Is there any way to inject it without mixing it with some liquid?

A No, there is not.

Q What's the most commonly used liquid?

A Water. Distilled water.

Q Other than the spoons, what else was in that?

A Glass lid of some sort. This could also be [p. 80] used for mixing in. Plunger from the syringe. Another syringe. Another syringe Another syringe. Two more syringes.

Q That was all in that bag?

A There's some more things in there.

Q What else is in there? If you could describe it for the record, please.

A Well, there's two razor blades, and a little plastic bag with white residue in it, a little white baggy.

Q Would you return those items to the brown bag please, officer.

(The witness complied.)

Q (By Mr. Blonigen) You indicated the next item that you found is the black bag, which is part of State's Exhibit No. 1; is that correct?

A That's correct.

Q Again, is it in the same condition as you observed it that day?

A Yes, it is.

Q If I could back up a little bit, Officer. What did you do with the syringe that you observed with the 60cc's of liquid in it?

A Immediately or since I've obtained it?

Q After you took possession of it, what did [p. 81] you do with it?

A I maintained custody of it, and when I returned to the office I placed it in a syringe safe biohazard container. I sealed it, and I sent it to the Wyoming Crime Lab for testing.

Q Now, was the defendant also present when you removed the black wallet-type container?

A Yes, she was.

Q Were you asking her any questions at this point in time?

A No, I did not.

Q Did she volunteer any comments when you removed the wallet?

A Yes, she did.

Q What was that?

A She stated, "That one is mine."

Q Did you open it?

A Yes, I did.

Q And when you opened it, what did you find?

A Similar to the other case, spoons, syringes, razor blade.

Q And in that, were there any syringes with any liquid left in there?

A Yes, there was.

Q And how many were there?

[p. 82] A There was a syringe containing approximately 10cc's of a liquid.

Q Were there any other containers of suspect liquid within the black wallet?

A Yes, there was a cylindrical small vial with a green lid that contained a liquid also.

Q You observed the syringe with 60cc's of liquid, as well as the syringes within the black wallet itself; is that correct?

A That's correct.

Q How would you compare the syringe that you found with the 10cc's of liquid in to the larger one with the 60cc's?

A They were identical syringes.

Q Now, were there any other syringes, other than that one within the bag itself?

A Yes, there was.

Q Approximately how many?

A I believe there were two, maybe three.

Q Anything else within that black wallet?

A Again, the spoons – similar to the brown bag, razor blade.

Q Could you open the black wallet please, Officer. And again, could you show the jurors what items you did retrieve from that?

[p. 83] A Razor blade, spoon.

Q Only one spoon this time?

A Yes. There may only be one spoon – some scissors, syringe, some – a straw, a pen that's hollowed out. A small piece of paper folded resembling a bindle or a container for narcotics or illegal drugs, another syringe. I am not sure what that is. I think it's for eyebrows, and a small bag with some white-powdery residue in it.

Q There was a small bag with white powder residue in the other one as well, wasn't there?

A That's correct.

Q How would you compare the two small containers, plastic containers, that you found in the two –

A They're identical.

Q Are there further items in there officer?

A Yes, there are.

Q What generally are they, without going through them one by one?

A This is a liner for a baby bottle. A pink piece of paper, it has some words on here. I can read them if you would like.

Q Did you determine whether they had anything to do with this case?

[p. 84] A It does not appear to, no. And another syringe, Q-Tips, tweezers – I don't know what that is – and a little container.

Q So you found a vial and 10cc's of liquid in a syringe in the black one and approximately 60cc's in the brown one; is that correct? In a syringe in the brown bag?

A That's correct.

Q What did you do with the three items, then, that had suspect liquid in there?

A They were packaged, as I described earlier, with the other syringe. They were in sort of a sharp proof container and sent to the crime lab for testing.

Q Between the time that you found them in the purse and sent them to the crime lab for testing, did you maintain custody of those items at all times?

A Yes, I did.

Q At any time were those items tampered with or changed in any way from their state when they were seized from the purse?

A No, they were not.

Q You indicated you used a tube that is also commonly known as a biohazard tube?

[p. 85] A Yes, it is.

Q I hand you a manila envelope marked as State's Exhibit No. 2, and I would ask you if you recognize the contents of that envelope?

A Yes, I do.

Q And what is that?

A It is – it's labeled with a sergeant safety tube. It has my handwriting as far as the date, the citation, the case number, and it has a biohazard seal placed across the top of it.

Q Now, what did you do with that tube?

A I placed this tube in certified mail and had it sent to the Wyoming Crime Lab.

Q Did the tube contain all three liquid samples of suspected methamphetamine?

A Yes, it did.

Q Did you seal the tube in any way?

A Yes, I did.

Q How was that?

A With a "Do not open" biohazard seal. And I placed it in the sealed envelope and mailed it certified.

Q At the time you placed the items in there, had they been changed in any way?

A No, they had not.

[p. 86] Q Had they ever left your possession?

A No, they had not.

Q When you placed those in the tube and sealed it, was there any way to get access for those items without disturbing the tube itself or the seal?

A No, there was not.

Q What then did you do with the tube itself?

A I gave it to the secretary, Cathy Delauter, and it was sent out certified mail.

Q Now, prior to the time that you sent it to the crime lab, was any of the liquid removed from any of the containers?

A No, it was not – well, yes. There was a small amount removed from the syringe containing 60cc's.

Q What was the purpose of removing that small amount?

A A field test of the liquid was performed to determine at the scene if it was methamphetamine or not.

Q Have you been trained in the use of such field test kits?

A Yes, I have.

Q When and where was that?

A That would have been the in-service training [p. 87] in 1993 at the Wyoming Law Enforcement Academy.

Q Have you had occasion to use these field test kits since you have completed your training?

A Yes, I have.

Q How many occasions, approximately?

A Twenty, twenty-five times.

Q Did you do so in this case?

A Yes, I did.

Q And did you use the test kit in accordance with your training and the producers specifications?

A Yes, I did.

Q What did you do with the small amount of liquid methamphetamine you removed from the syringe?

A I have – I left it in the brown container where that syringe was removed from.

Q And when you used your field test kit, was there a result shown by it?

A Yes, there was.

Q And what is that?

A It shows a distinct color, which would indicate – if this color appears, the substances show that, in fact, the drug in this case was methamphetamine.

Q And did you get a positive result on your field tests?

[p. 88] A Yes, I did.

Q After all these items, did you ever request the assistance of any other agency in dealing with this case?

A Yes.

Q And what was that?

A I contacted the Division of Criminal Investigation to contact this person. I thought there may be reason to believe that there was drug trafficking and sale of drugs possibly, so I contacted them to further investigate that.

Q And to your knowledge did they, in fact, contact the defendant?

A Yes, they did.

Q Who did you contact from DCI?

A I don't recall the agent that I – that I personally contacted.

Q Did you later speak to Agents Peters and Malone about the case?

A Yes, I did.

Q And did you fill them in on all the information you had obtained that morning?

A Yes, I did.

MS. SHARUM: Objection. Leading, Your Honor.

[p. 89] MR. BLONIGEN: That's all the questions I have, Your Honor.

THE COURT: I'll overrule the objection.

CROSS-EXAMINATION

BY MS. SHARUM:

Q Officer, let's just go over some of the basic facts of this again. You stopped this car on July 23rd?

A That correct.

Q Of 1995?

A Yes.

Q About 1:00 a.m. or so?

A At 1:14 a.m. I made the stop.

Q 1:14. And you stopped the car because it was speeding or partially, that's why you stopped it?

A That's correct.

Q And because a brake light was out?

A That's correct.

Q And there were three persons in that car?

A That's correct.

Q One male, correct?

A Yes.

Q And he was driving, correct?

A Yes, he was.

[p. 90] Q And that male was David Young?

A Yes.

Q And two females, correct?

A Correct.

Q One was Vanessa McQueery?

A Yes.

Q And the other was Sandra Houghton?

A Yes.

Q Okay. And David Young was sitting in the driver's seat of the car?

A Correct.

Q And Ms. Houghton was sitting in the passenger seat, correct?

A She was on the driver – or the passenger side door.

Q Passenger side door, okay. Is this a two-door or four-door car?

A Two door.

Q So she's on the passenger side door?

A Correct.

Q Okay. And Vanessa McQueery is located in the front seat as well; is she not?

A Front seat, middle.

Q Front seat, middle. And then Sandra Houghton is next to her, correct?

[p. 91] A Yes.

Q Okay. Now, you walk up to the car, and the first person you speak to is David Young, isn't it?

A Yes.

Q And as you walk to the car, you notice something unusual in his shirt pocket; isn't that true?

A That's correct.

Q And that unusual thing was a syringe?

A Yes.

Q And from your training you said you suspected that might have been drug related?

A Yes.

Q Now, at this time you asked David Young to exit the vehicle; is that true?

A No, it is not.

Q Okay. But what did you do right then? Went back to your car?

A I asked the other officers to come back with me, and I advised them of the situation.

Q And you eventually had Mr. Young exit the vehicle and did a pat-down search of him?

A When I removed him from the vehicle, I asked him to take the syringe out of his pocket and place it on the car. And he said he used it to take [p. 92] drugs. And at that point I searched him, and it was not a pat-down.

Q After this has occurred, you – you eventually in a few minutes time, you do a search of the car; isn't that true?

A Yes.

Q And the search of the car, before you did that you asked both Sandra Houghton and Vanessa McQuerry to step out of the car?

A I did not personally ask them to get out of the vehicle. But yes, they were out of the vehicle.

Q Now, you stated that you found a purse in the car?

A Yes.

Q And the purse was a brown purse; isn't that true?

A Yes.

Q Okay. And, in fact, it's a brown kind of leather looking purse; isn't that right?

A Could be.

Q You don't recall?

A It was a brown cloth bag.

Q You don't recall if it was – if it looked like it was a leather purse?

A I do not recall it looking like leather, no.

[p. 93] Q Did you keep that purse?

A No, I did not.

Q Okay. Now, as you find this purse it's found on the floor of the – kind of on the floor of the car?

A No, actually it was on the seat.

Q It was on the seat next to my client, correct?

A No, it was in the back seat.

Q In the back seat?

A Yes, ma'am.

Q So, the purse is in the back seat of the car, but it's between – kind of between both Vanessa McQuerry and Sandra Houghton though, isn't it?

A No, it is not.

Q It is not between them?

A No.

Q Now, David Young is sitting in the driver's seat, right? It's his car, right? David Young was in the driver's seat?

A Yes, he was.

Q And Vanessa McQueery is sitting next to him?

A Yes.

Q And Sandra Houghton is sitting next to the [p. 94] passenger side door?

A Correct.

Q And you say the purse was in the back?

A Correct.

Q So, it wasn't next to Sandra Houghton then?

A No, it was not.

Q Now, this is a – the car is an enclosed space; isn't that true? To the extent it's a defined area?

A Yes.

Q Anybody could have had access to that purse prior to this occasion, and you would not have known about it; isn't that true? Prior to the stop?

A That could be, I guess, yes.

Q I mean you would not have known what had happened earlier that day at 2 o'clock or at 10 a.m. or anything like that?

A No, I did not.

Q You would not know if Sandra Houghton left her purse unattended for some portion of the day, would you?

A No.

Q This stop occurred at 1 a.m.; isn't that true?

A 1:14 a.m.

[p. 95] Q 1:14 a.m. At 1:14 a.m. you were talking about – you didn't see any sudden movements in the car, but it was dark at 1:14 a.m.; isn't it?

A Yes, it is.

Q And the dome light was not on in the car, was it?

A No, it was not.

Q Now, as you get this purse out and start to look through it, one of the first things you remove is a brown container; isn't that true? You remove a brown container the one that you have shown?

A Yes, I did remove this from the purse.

Q You removed that first, prior to removing the black one?

A I removed it second, and the black one was third.

Q And the first one was the wallet that contained the identification?

A Correct.

Q Now, you removed the brown item. The second item you removed, it contained a syringe of approximately 60cc's, correct?

A Yes.

Q And the black one contained a syringe of approximately 10cc's?

[p. 96] A And a vial.

Q And a vial. And when you removed the second item, and she says, "That doesn't belong to me." Sandra Houghton said that that wasn't hers; is that true?

A I don't know what item you'd identified when you asked the question.

Q The second item, the brown container, she said that was not hers?

A Correct.

Q And that was the one you removed first – I mean second?

A Of these two containers, it was the first one I removed, yes.

Q So her first thing she does is she says, "This one isn't mine."

A Yes.

Q Now, when you remove the second one, after she has made a general denial, she says, "Well, now that one is mine;" isn't that true?

A Correct.

Q At this point she could have denied both of them being hers, couldn't she?

A Yes, she could have.

Q But she only denied the first one, the brown [p. 97] container?

A Yes.

Q Okay. Now, that evening did you – did you keep that purse, or did you return it to someone?

A These items here are the only things that I confiscated and kept in my custody.

Q So you didn't keep that purse that night?

A That's correct.

Q And you didn't keep the identification of the person in that purse that night, did you?

A No, I did not.

Q And you returned that purse to someone in the car; did you not?

A I left it in the vehicle.

Q Did you – isn't it true that you arrested Sandra Houghton that night?

A Yes, it is.

Q Now, you have her identification in the purse. You assume this is her purse, yet you did not return it to her?

A Correct.

Q You returned it to someone else in the car, apparently, because it was returned, simply, to the car?

A I just left it in the car.

[p. 98] Q Okay. Now, did you arrest David Young that night?

A No, I did not.

Q You didn't arrest him, even though he had a syringe in his pocket?

A That's correct.

Q Did you arrest Vanessa McQueery that night?

A No, I did not.

Q Even though she was found in a car that was found to have drugs in it, you did not arrest her?

A That's correct.

Q Okay. You only arrested my client, Sandra Houghton?

A Yes.

Q And you arrested Sandra Houghton that night because you believed her statement that that one bag was hers, didn't you? That's why you arrested her?

A I arrested her because of possession of a controlled substance.

Q Because you believed her statement that that brown bag, that she admitted to, was hers.

MR. BLONIGEN: Your Honor, if Ms. Sharum wants to have this witness testify as to what he believes and does not believe, I don't particularly object. But the Supreme Court has said that's an [p. 99] improper question. And based upon that, I would object to it. I don't want to taint the record.

THE COURT: I'll sustain the objection.

Q (By Ms. Sharum) Now, when you approached the car that evening – now, you find this purse in that car. Did you at any time – I mean, in the back seat of the car wasn't there clothing as well? I mean, the back seat was pretty full, wasn't it?

A I don't recall it being full, no.

Q You don't recall it being full. How many I mean, you do a lot of these traffic stops, don't you officer?

A Yes, I do.

Q How many do you think you do per week?

A It would vary greatly.

Q You don't have – how many do you think you do per month, average?

A Maybe around a hundred or so.

Q So there are a lot of traffic stops, a lot of things to keep in mind from each of them; isn't there?

A Yes, there is.

Q Now, you eventually found her ID that had a different name on it than the one she had originally given you; isn't that true?

[p. 100] A Yes.

Q And you asked her at some point in time, "Are you Sandra Houghton?" Isn't that true? When you approached her with the ID?

A I asked her if the license was hers.

Q And she admitted to that?

A Yes.

Q And she – she – and in the process of that she admitted, "Yeah, this is mine"?

A Yes.

Q Okay. So she didn't – she – once confronted, she didn't deny something, she simply admitted it? And once confronted, she admitted who she really was?

A Yes.

Q And she admitted when you – when you – when you took out the third bag that that was hers? When you confronted her with that?

A Correct.

Q But she denied the brown bag specifically?

A Yes.

MS. SHARUM: May I have a moment.

Q (By Ms. Sharum) Now, you talked a little bit about comparing syringes, comparing plastic bags. I mean, as far as the number of types of [p. 101] syringes out there – I mean, I know there is a large number of them. But this a fairly common type of syringe, isn't it?

A Yes, it is.

Q I mean, it was one that you can see fairly regularly in your line of work?

A It could be, yes.

Q So, you know – I mean just because there's one type of syringe doesn't mean that other people can't own it; isn't that true?

A That's true.

MS. SHARUM: No further questions.

MR. BLONIGEN: Just a moment Your Honor, I need to observe something.

REDIRECT EXAMINATION

BY MR. BLONIGEN:

Q Officer, you testified you make about a hundred traffic stops a month; is that correct?

A Yes.

Q How many of those involve finding narcotics though?

A Sometimes none.

Q Okay. So as far as that goes, this situation is unusual for you, isn't it?

A Yes, it is.

[p. 102] Q Mr. Sharum asked you several questions about the purse itself. Was it easily within the reach of the defendant?

A I believe it could be, yes.

Q Who would it have been easier to reach for, the defendant or the driver, Mr. Young?

A I would hate to speculate on that.

Q Now, was it clear over on the driver's side when it was found?

A It was close to the center, somewhat on the driver's side.

Q Now, Mr. Sharum asked you several times about her comment, "that's not mine" referring to the brown bag; is that correct?

A That's correct.

Q She said, "It's not mine;" she didn't say, "I didn't know it was there," or "How did that get there," did she?

A No, she did not.

Q The syringe on David Young, you indicated he was not arrested. Is there a problem with arresting people for controlled substance violation who have only an empty syringe?

A The difficulty in that is having the syringe tested. The crime lab will not accept a syringe of [p. 103] that type with little or very little substance in it. They don't wish to handle the syringes any more than anyone else.

And I don't know what those exact policies are, but I know they don't wish to do that.

Q Is there any way you could prosecute somebody for possession without something to test?

A No, there's not.

Q You did not fingerprint the syringes or these bags you have before you; is that correct?

A That's correct.

Q Why is that?

A There is very little surface to the syringe and the other containers are not subject to retaining a good print.

MR. BLONIGEN: I belief that's all the questions I have.

RECROSS-EXAMINATION

BY MS. SHARUM:

Q You said the purse was in the back seat?

A Correct.

Q And you said you did not want to speculate on whether or not it would be easier for the driver or the defendant to get the purse?

A Correct.

But the driver could have gotten to the [p. 104] purse if he wanted to?

A It's possible, yes.

Q And Vanessa McQueery could have gotten to the purse if she wanted to?

A In her case it would have been difficult to get to it. It would have been directly behind her.

Q But she could have?

A Anything is possible.

Q And you don't know whether or not perhaps she left the purse in the car and went somewhere else prior to the traffic stop?

A No. I have no prior knowledge of the purse, no.

Q And you talked about – Mr. Blonigen asked you about the syringe he found on David Young. It could be tested, couldn't it? If you really wanted it to, you could have sent it down to the state crime lab?

A I didn't know that's a crime – why don't you rephrase the question, please.

Q You could have sent the syringe down to the state crime lab? You could have sent it down there?

A I could have sent it, yes.

Q And it possibly could have been tested?

A That would be their determination.

[p. 105] Q And, in fact, haven't you sent that syringe down to the state crime lab?

A No, I have not.

Q You haven't sent it down. But if you wanted to, I guess, you could?

MR. BLONIGEN: Your Honor, it's been answered, and it's argumentative.

THE COURT: I'll sustain the objection.

MS. SHARUM: No further questions, Your Honor.

MR. BLONIGEN: We have no further questions for this witness at this time, Your Honor.

THE COURT: Thank you. You can be excused.

MR. BLONIGEN: The state would call George Angelos.

GEORGE ANGELOS,

having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BLONIGEN:

Q Would you state your name for the record, please.

A George Angelos.

Q Where are you employed, Mr. Angelos?

A I am employed in Cheyenne, at the Division of Criminal Investigation in the crime laboratory [p. 106] section.

Q How long have you been with the crime lab?

A Approximately five years.

Q What are your primary duties at the laboratory?

A I'm a forensic scientist in the chemistry section. Primarily involved in drug identification and gun shot residue examination.

Q And have you had occasion to testify as to drug identification within the state of Wyoming?

A Yes.

Q And have you been admitted as an expert in the courts of the state of Wyoming as an expert in drug identification?

A Yes.

Q What is your educational background for this position, Mr. Angelos?

A I have a Bachelor's in chemistry from Northern Illinois University, a Master's in organic chemistry from the University of Wyoming.

Q And have you received further training in this area?

A Yes.

Q When and where was that?

A In-house, at the crime laboratory.

[p. 107] Q How many occasions have you testified about your testing of controlled substances in the courts of the state of Wyoming?

A We don't keep close records on that, but I would assume approximately – the testifying, did you say?

Q Yes.

A I would say 30 or 40 times.

Q And do you have any approximation as to how many times you have tested suspect substances to determine whether, in fact, they were controlled substances?

A Yes.

Q How many occasions?

A Again, rough estimates of about several thousand times.

Q Are there methods which are available, by which we can tell exactly what a controlled substance is?

A Yes, there are.

Q Are they generally accepted within the scientific community?

A Yes, they are.

Q And have you been trained in these methods of testing to determine the nature of the substance?

[p. 108] A Yes.

Q And did you use such techniques in this case?

A Yes, I did.

Q What was your involvement in this case, Mr. Angelos?

A I was the examiner assigned to this case.

Q What did you receive for testing in this case?

A May I refer to notes?

Q Yes.

A I received three items to test.

Q Would you describe them briefly for us, please.

A Yes. There was a syringe containing a light tan substance, a second syringe also containing a light tan residue, and one glass vial containing a clear liquid.

Q Were the first two items, in fact, syringes?

A Yes.

Q When you received them, did you receive them in the biohazard-tube that we've referred to as State's Exhibit 1 which is before you?

A Yes.

Q How can you identify that as being the same [p. 109] biohazard tube you received from the highway patrol?

A It contains my initials, the case number and the item number.

Q When you received that, were all the items contained in that one tube?

A Yes, they were.

Q And was the seal to that tube intact when it was received?

A Yes.

Q It remained intact until your testing procedures began?

A That is correct.

Q Now, what do you do to test a suspect substance to determine whether, in fact, it is a controlled substance?

A What I do is dependent upon the nature of the material to be tested – specially for this case?

Q Yes.

A I used extraction procedures associated with methamphetamine and then subjected those extracts to gas chromatography and mass spectroscopy.

Q And by use of those devices, can you determine exactly what substance you had before you?

A Yes, I can.

[p. 110] Q Did you remove samples from all three of these containers of suspect controlled substances?

A Yes.

Q And did you also have occasion to weigh the substance inside the syringes and the vial?

A That is correct.

Q Now, when you weigh that, does that include the liquid carrier medium, the suspect substance is in?

A Yes, it would.

Q And in all three of these cases were these in a liquid medium?

A No, one item was a residue.

Q And that was the second syringe?

A Correct.

Q And when you mean residue, what does that mean? What does that term mean?

A It means there's a very small amount of material that we cannot visually identify. It has a particular substance like a powder or what have you. So in a situation like that, we rinse the syringe with an appropriate solvent and then examine that for drug content.

Q Now, there has been testimony here that one syringe had approximately 60cc's of liquid in it; is [p. 111] that correct?

A That's what I had heard in the testimony, yes.

Now, was it within the syringe when you received it?

A Well, I received a liquid that weighed a little over half a gram.

Q Let me back you up a little bit. When we get the weight of the liquid and you give the weight on your report, is that the weight of the liquid in the controlled substance itself or does that include the syringe?

A That does not include the syringe. That would have been the actual liquid contained within the syringe.

Q So, no containers are measured in this way; is that correct?

A Correct.

Q Now, turning your attention first to the larger amount in the syringe, which in your report is listed as I-A. Did you, in fact, subject that substance to your testing?

A Yes, I did.

Q And can you state to a degree of scientific certainty what the substance in that syringe was?

[p. 112] A Yes.

Q And what was that?

A It contained methamphetamine.

Q And what was the approximate weight of that methamphetamine that you received?

A The weight of the sample received was .51 grams.

Q You referred to another syringe that you tested for residue; is that correct?

A Correct.

Q And does that have any weight assigned to it?

A No, sir, that's recorded as a residue.

Q And how do you test that residue amount?

A As I mentioned earlier, I would rinse the syringe with an appropriate solvent and subject that washed extract to chemical testing.

Q And based upon your testing in this case again you – can you state to a degree of scientific certainty what the residue substance in that syringe was?

A Yes. It contained methamphetamine.

Q The third item, your 1-C, a vial. Did you test the substance in that according to the methods you described?

[p. 113] A Correct.

Q And can you state to a degree of scientific certainty what that liquid was?

A Yes, it contained methamphetamine.

Q Now, in that instance, what did the carrier medium and the methamphetamine weigh?

A .27 grams.

Q So the combined total of the two you did weigh was .78 grams; is that correct?

A Yes, sir.

Q Did you place your findings in a written report, Mr. Angelos?

A Yes, sir.

Q I hand you a document which I have marked as State's Exhibit No. 3, and ask you if you recognize this document?

A Yes, I do.

Q And what is that?

A This is an identification report issued by the Wyoming Crime Laboratory.

Q And does it pertain to this case as you have just testified?

A Yes, it does.

Q How can you identify that as pertaining to this case?

[p. 114] A It contains the agency case number and our laboratory case number.

Q And is that, in fact, original of that report baring your signature?

A It appears to be the original, yes.

MR. BLONIGEN: We would move for introduction of No. 3, Your Honor.

MS. SHARUM: No objection, Your Honor.

(State's Exhibit No. 3 was admitted into evidence.)

MR. BLONIGEN: That's all the questions I have for this witness, Your Honor.

CROSS-EXAMINATION

BY MS. SHARUM:

Q Item I-A is found on here. You stated it had .51 grams?

A Correct.

Q And Item 1-C is .27?

A Correct.

Q Okay, now combined they equal .78, but separately they do not. I mean, each one is separate, right?

A Yes.

Q Came in a separate container?

A Correct. They are individual evidence.

[p. 115] Q So one was a syringe, and it was an individual item weighed separately?

A Correct.

Q And the other was a vial of an individual item weighed separately?

A Correct.

Q And the other syringe only had residue in it?

A That's correct.

Q So the weight cannot be determined on that one?

A That's correct.

Q Now, you have no personal knowledge, do you, if my client possessed any of these items?

A That is true.

Q And you don't have any personal knowledge about who else may have possessed them?

A That is true.

Q And you've testified in about 30 to 40 cases?

A Approximately. That's a rough estimation.

Q And how many times in that estimation have you testified on behalf of the State?

A I would say probably all of them.

MS. SHARUM: No further questions.

[p. 116] REDIRECT EXAMINATION

BY MR. BLONIGEN:

Q Based on that last question, just one follow-up question. Are the facilities of your laboratory equally available to defendants, if they choose to use them?

A Yes, it is.

MR. BLONIGEN: That's all the questions I have, Your Honor.

THE COURT: Thank you. You can be excused.

THE WITNESS: May I be excused, so I can go home?

MR. BLONIGEN: We have no objection to him being excused, Your Honor. He needs to return to Cheyenne.

MS. SHARUM: We have no objection, Your Honor.

THE COURT: Okay.

THE WITNESS: Thank you.

MR. BLONIGEN: Your Honor, we have one more witness. Does the Court wish to break at this time? It will probably take longer than 15 minutes.

THE COURT: We will be in recess then until 1:30 in the afternoon.

(Court was in recess at 11:45 p.m.)

[p. 117] (Court reconvened at 1:30 p.m.)

MR. BLONIGEN: The State will call Chris Peters.

CHRIS PETERS,

having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BLONIGEN:

Q Would you state your name for the record, please.

A My name is Chris Peters.

Q Where are you employed?

A I am employed by the State of Wyoming, Division of Criminal Investigation.

Q Are you a police officer?

A Yes, I am.

Q Which department are you originally a member of?

A The Douglas Police Department.

Q I take it the ponytail isn't Douglas Police Department issue. What is your present assignment?

A I am a special agent for DCI.

Q What is your primary area of responsibility in that regard?

A We investigate violations of the Controlled Substance Act.

[p. 118] Q On August 1, 1995, did you have occasion to meet with Patrolman Baldwin in reference to this case?

A Yes.

Q Why did you meet with Patrolman Baldwin?

A He had contacted our agency and requested some assistance.

Q During the course of that meeting, did Officer Baldwin show you various syringes he had seized from the defendant's purse?

A Yes.

Q Do you recall viewing two different syringes?

A Yes.

Q Directing your attention first to what I refer to as the largest syringe, that is the one containing approximately 60cc's of a liquid. Did you observe that syringe?

A Yes, I did.

Q Did you have occasion to attempt to weigh the substance within that syringe?

A Yes.

Q How did you do that?

A I used our scale that we have at the office.

Q If you're not removing the substance from [p. 119] the syringe, how do you calculate the weight?

A We weigh the syringe with the liquid in it and we weigh the syringe of the exact same type and size.

Q Did you have a syringe of the exact same type and size?

A Yes.

Q And how much did the empty syringe weigh?

A 2.9 grams, approximately.

Q And how much did the filled syringe with 60cc's weigh?

A It weighed approximately 3.4 grams or 3.5 grams.

Q Okay. Would it refresh you to look at your report? Did you put that in your report?

A Yes, I did make a report.

Q Is that report made immediately after the contact?

A Yes.

Q Did you place the total weight of the large syringe in that report, officer?

A Yes, I did.

Q And what was that weight again?

A It weighed 3.4 grams.

Q So based on that, you estimated a weight of [p. 120] what for the largest syringe?

A Of the substance?

Q Yes.

A Approximately half a gram.

Q Five-tenths of a gram?

A Yes.

Q Did you do the same with the smaller syringe or the syringe with less substance in it?

A Yes.

Q And, again, what did you do?

A We placed the smaller – or the syringe with less liquid on the scale and weighed it.

Q And did you follow the same procedure as you previously described?

A Yes.

Q Approximately – from that, could you approximate the weight of the liquid in that syringe?

A Yes.

Q And what was that?

A It weighed about a tenth of a gram.

Q About one-tenth of a gram?

A Yes.

Q After speaking with Officer Baldwin, did you attempt to contact the defendant, Sandra Houghton?

[p. 121] A Yes.

Q And do you see that individual here today?

A Yes..

Q Could you identify her for the record please?

A She has sort of purple hair and a purple shirt. She's seated at the defense table.

Q And is that the same person you spoke to on August 1, 1995?

A Yes, it is.

Q Where did you speak to her?

A At the Casper Police Department, in an interview room.

Q Was anyone else present other than yourself and the defendant?

A Yes.

Q Who was that?

A Special Agent Malone.

Q Prior to speaking with her, did you give her a *Miranda* advisement?

A Yes, I did.

Q How do you do that?

A I read it from a card that I carry with me.

Q Do you have that card with you today?

A Yes.

[p. 122] Q Can you give the advisement as you gave it to the defendant that day, please?

MS. SHARUM: Your Honor, I would like to object to the admissibility of this evidence.

THE COURT: I will overrule the objection.

Q (By Mr. Blonigen) Do you have that card with you?

A Yes, I do.

Q Would you take that card out and read the advice as you gave it to the defendant that day?

A It says, "You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to talk to a lawyer and have him present with you while you are being questioned. If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning if you wish. You can decide at any time to exercise these rights and not answer any questions or make any statements."

On the back of the card, No. 1 is, "Do you understand each of the rights I have explained to you?"

Q And what did she state to that?

A She said she did.

[p. 123] Q Go on, please.

A "Having these rights in mind, do you wish to talk to us now?"

Q And what did she respond?

A She said she would.

Q Did you speak to her about the events of July 23, 1995?

A Yes.

Q What did she tell you with regard to the items found in her purse?

A She said that the items, syringes, the other drug paraphernalia were all hers.

Q Did she tell you what was in the syringes?

A Yes.

Q What was that?

A She said that it was methamphetamine.

Q Did she use, when she spoke about that, the plural syringes?

A Yes.

Q Did she state where she obtained that from?

A Yes.

Q Where was that?

A She said that she had obtained it from David Young's house.

Q How did she come into possession of it then, [p. 124] if she found it at David Young's house?

A She said she was cleaning his house and she found it.

Q And did she state what she was going to do with it?

A Yes.

Q What was that?

MS. SHARUM: Objection, Your Honor. If we may approach.

THE COURT: Okay.

(The following bench conference was had out of the hearing of the jury.)

MS. SHARUM: This is highly prejudicial to my client, and I think the probative value is far more than any probative value that he should have.

MR. BLONIGEN: Your Honor, these are statements that the defendant is aware of. She was aware of what the substance was. She knew what it was.

MS. SHARUM: She stated she knew it was methamphetamine. Therefore, I don't understand why her intending to do this later matters. It is still very highly prejudicial.

THE COURT: I'll overrule the objection.

(Back in open court, with the jury present.)

[p. 125] Q (By Mr. Blonigen) Did she state what she was going to do with that?

A Yes.

Q What was that?

A She said she was going to use it.

Q Now, did you question her about how those items got in her purse?

A No.

Q Okay. But she did state they were all hers?

A Correct.

Q Now, you have dealt with methamphetamine quite a bit, I take it, in your work as a DCI agent?

A Yes, I have.

Q Is there any way to ingest methamphetamine with a needle, without using some sort of liquid carrier medium or diluting agent?

A No, there is not.

Q What is most commonly used as a diluting agent or carrier medium?

A Water.

MR. BLONIGEN: That's all the questions I have, Your Honor.

CROSS-EXAMINATION

BY MS. SHARUM:

Q You currently work for the Department of [p. 126] Criminal Investigations?

A The division, yes. The Division of Criminal Investigations.

Q The division, sorry. And you talked with Ms. Houghton on August 1, of 1995?

A Yes, I did.

Q And you talked with her in an interview room at the Casper Police Department?

A Yes.

Q And that conversation did not last very long. It lasted maybe 10 minutes or so?

A I don't remember how long it was.

Q You don't remember exactly – would you approximate that it was approximately 10 minutes?

A That would be fairly close.

Q And it was a brief conversation?

A Yes.

Q You originally went up there in order to talk to her about David Young; isn't that true?

A That is true.

Q And that's what you were originally planning on questioning her about; isn't that true?

A Yes.

Q When you went up there to talk with her, you did not bring the various things that were [p. 127] located – that she's accused of possessing?

A No.

Q You didn't bring them with you, so you didn't point out various items like, "Did you own this?" or "Did you own that?" You did not ask those questions?

A No.

Q Now, you filled out a very brief report about this; did you not?

A Yes.

Q And in that report, you state that Ms. Houghton said she was packing Young's belongings for him and found the syringe. Houghton said that she kept the syringe and put it in her belongings. Now, you put that in the singular; did you not?

A Yes, I did.

Q Like she was talking about a syringe?

A At that particular time, yes.

Q And, in fact, you had gone up and asked her in general about syringes, but she eventually just admitted – she talked about a syringe, not several?

A No.

Q She – according to the statement you have, she talked about the syringe?

A Yes.

[p. 128] Q And that's the syringe she was talking about during most of the conversation?

A That was the syringe with the largest amount, yes.

Q How do you know, if she didn't specifically identify it for you?

A No, no. She didn't, you're correct, but that was the big one with the most stuff in it.

Q How did you know that, if you didn't bring up the syringe and say, "Is this the syringe we are talking about?" Did you?

A Yes, I did. I talked about several syringes – I mean, I talked about the syringes.

Q You brought up the syringe to – for her to identify?

A No.

Q Okay. That's okay. Now, let's go back. You did not bring up the syringe for her to identify?

A Did I physically bring one to the jail?

Q Yes. Did you physically bring it to the jail?

A No, I did not.

Q And you were talking about what occurred that night on July 23rd? You were talking about [p. 129] that July 23rd incident?

A Yes.

Q And it was a very brief conversation?

A Yes, it was.

Q And it started by talking about David Young?

A Yes.

Q And in the process she starts talking about a syringe. Now, did she ever physically identify which syringe she was talking about to you? Did she ever say, "That's the syringe I'm talking about" and point at it?

A I just told you that I didn't bring it with me, so that would be impossible.

Q So she's talking about a syringe. Is it possible that maybe you were – that this was a very brief conversation and that there could have been some confusion about what was being talked about that day?

A No.

Q You don't think there is any chance that somebody could have been confused in a 10 minute conversation that started off talking about something else?

A I was extremely pointed with my questions. I went through it very detailed. I said, "You [p. 130] didn't get any of this from David Young? Nothing that was found in your possession that night came from David Young?" and, "it was all yours?" And she said, "Yes." "Nobody gave you those syringes? Nobody put them in there? They were all yours?"

Q Officer Peters, you – now, obviously – was there a tape recording of this conversation?

A No.

Q And is it, you know, when somebody is confessing, is it normally standard procedure to tape record it?

A I would have to explain that. But I would answer no.

Q It's not normally – you don't normally tape record confessions?

A This was not a confession. I was not anticipating obtaining any information from her. I went to gather intelligence about David Young, who I suspected of being a drug dealer. That's why it wasn't tape recorded.

Q On the piece of paper, which is the only thing I have that tells me about what occurred that evening, and this is a report you filled out. May I approach the witness.

I'll let you look at this report. Is this, [p. 131] in fact, the report you filled out concerning the incident?

A Yes, it is.

Q Okay. Now, you're taught in your training that these reports are very important, aren't you?

A Yes.

Q And, in fact, these reports have to be very accurate?

A Yes.

Q Okay, in this report it talks about the syringe, but you never identify which syringe she's talking about?

MR. BLONIGEN: Your Honor, I'm going to object. This is at least the third time that's been asked, and it's misleading as to the entire statement. He refers to the syringes in the plural, clearly, in the preceding sentence. I think, number one, he's answered this, and is has been asked; and secondly, I don't think it reflects the whole statement in the report.

THE COURT: I'll overrule the objection.

Q (By Ms. Sharum) Did you at any point state which syringe she was talking about at various times? In your report, did you write that down?

A What do you mean?

[p. 132] Q Did you, in the report, ever say, "While we were talking about the syringe containing 10cc's she said this"?

A No.

Q Did you ever say, "While we were talking about the syringe that contained 60cc's she said this"?

A No, not specifically.

Q Wouldn't you think that would be something that would be important to include in a report?

A Yes and no.

Q Okay. Now, she talks about – and you admit this was a conversation that occurred over approximately 10 minutes. Is there – you said that there's no chance she could have ever been confused about anything. You – you know the defendant so well that you know her state of mind when she was talking to you?

MR. BLONIGEN: Your Honor, I am going object to that. That's argumentative.

THE COURT: I'll sustain the objection.

(By Ms. Sharum) You stated earlier that you were very poignant with your questions, correct?

A Yes.

Q And she could not have been confused, [p. 133] correct?

A Yes.

Q And you know for a fact that there's no way she could have been confused?

MR. BLONIGEN: Your Honor, again he's answered these questions at least three times. It is repetitive, and it's simply argumentative. He's answered the question.

THE COURT: I'll sustain the objection.

Q (By Ms. Sharum) Now, when you first started this conversation with her, you started with generalities, didn't you, Officer? You started talking in general, and then you narrowed the focus as you went along; isn't that true?

A No.

Q You started off with very specific questions and went general, or did you start off with the general questions and go specific?

A I kept my questions very pointed throughout the entire thing.

Q You didn't start off by saying something like my name is Officer Peters, and I am here to talk to you about the night of July 23rd? You didn't start off with something like that as a basic introduction as to what was going to happen during [p. 134] this conversation so she would know?

A I may have said something similar to that.

Q So it started off talking in generalities about the evening, by pointing out what you were going to talk about?

A Yes.

Q Thank you. And then you went to more specific questions about syringes, right?

A Yes.

Q And eventually it went to specific questions about a single syringe that was found?

A Yes.

Q So you started off general and went to specific?

A Yes.

Q Now, you can say – now, as you got towards the end of these conversations, and you're asking very specific types of questions, you get down to one syringe. You are talking about a syringe?

A Yes.

Q And it talks about whether or not that syringe belonged to her, the single syringe?

A Yes.

Q Okay. But you freely admit that you didn't bring up the bag the syringes came in, to the Casper [p. 135] Police Department to talk about – just to make sure you knew which ones were being talked about.

MR. BLONIGEN: Your Honor, again he's answer that question three times. He stated that he did not physically bring the syringe to the Casper Police Department.

THE COURT: I'll sustain the objection.

MS. SHARUM: I have no further questions, Your Honor.

REDIRECT EXAMINATION

BY MR. BLONIGEN:

Q Officer, you did use the singular, "The syringe," in this report, didn't you?

A Yes, I did.

Q But would you read the whole paragraph as I marked off between the two black marks there, and you had your report you finished shortly after this incident?

A Yes, "Houghton said that the liquid in the syringes was methamphetamine, and that she had found it while cleaning the house. Houghton went on to say that she had been packing Young's belongings for him and had found the syringe. Houghton said that she had kept the syringe and put it with her belongings. Houghton planned on using the [p. 136] methamphetamine herself."

Q Is the 10cc's really enough for a usable amount?

A Yes.

Q And the 60 is as well?

A Yes.

Q And during that conversation, then, you did – did she specifically indicate to you which syringe you were referring to as, the syringe?

A Yes.

Q Was there any doubt in your mind from your conversation which one she was referring to?

A No.

Q Which one was that?

A The one with the 60cc's in it.

MR. BLONIGEN: That's all the questions I have, Your Honor.

RECROSS-EXAMINATION

BY MS. SHARUM:

Q It says she was packing up Young's house. Did she give the first name of the person she was packing the house up for?

A David Young.

Q She said she was packing up David Young's house, not Johnny Young's house?

[p. 137] A She was packing up David Young's belongings from Johnny Young's house.

Q Now, you stated at the beginning that you started off with more generalities. You started off by saying that there was – you know, you start off by telling her – you were talking about that night, and you went to more specific questions.

Isn't the first part of that sentence you being general? You're talking about the syringes as a whole and then you start talking about the generalities of a syringe where you are more poignant?

A I guess in general, I said, "Is anything that the highway patrol found in your belongings that night someone elses?" "No," was what her response was. And I said, "Are you sure none of that came from David Young? He didn't give that to you or make you hold it for him while he talked to the police?" "No."

Q Now, would it have been important to have identified, while talking about the syringes, which syringe you were talking about in the report?

MR. BLONIGEN: Your Honor, again this is asked and answered. It is also beyond the scope of redirect.

[p. 138] THE COURT: I'll sustain the objection.

Q (By Ms. Sharum) In reading that paragraph, do you find that you start talking about the liquid in the syringes and then you go into, "I found the syringe?" Could she have mistakenly spoken and when meaning a syringe at the beginning, and then went to a more specific?

MR. BLONIGEN: That's speculative and it's argumentative. We've been over this ground three or four different times.

THE COURT: I'll sustain the objection.

MS. SHARUM: I have no further questions.

MR. BLONIGEN: We have nothing further for this witness, Your Honor. The State would rest.

THE COURT: Thank you. You can be excused.

THE COURT: Ms. Sharum.

MS. SHARUM: Your Honor, if this is the close of the State's argument, I would like to make a Motion for Judgment of Acquittal at this time.

THE COURT: Do you want to approach the bench.

(The following bench conference was had out of the hearing of the jury.)

THE COURT: Ms. Sharum, did you want to go ahead and make your motion now?

[p. 139] MS. SHARUM: Your Honor, I do not believe the State has proven the defendant actually was in possession of a controlled substance here. All they have shown is that she admitted to having one syringe. She has not admitted to any of this other evidence. And I think the evidence does not show she has admitted to any of the evidence indicated here.

MR. BLONIGEN: Your Honor, for one thing what she has admitted to had a total weight of 3.7 grams. That alone is enough – in fact, it's beyond what the State needs in this case. There's more than enough evidence. The jury can decide for themselves whether the full amount of evidence was hers.

MS. SHARUM: I would also state for the record that I think that the weighing of the syringe that contains the 10ccls is inaccurate. It was sent to the state crime lab, was not weighed and it should have been weighed. That's what their job is.

MR. BLONIGEN: Your Honor, and that goes to weight and it's not admissable. There's no doubt about the weight, and I can demonstrate that by the other syringe being weighed accurately.

THE COURT: It appears to me that there is sufficient evidence to allow the jury to decide the [p. 140] case, so I'll deny the motion.

MS. SHARUM: Your Honor, if I could have about five minutes to speak with my client to confirm whether or not she wants to take the stand.

(The following proceedings took place in open court, with the jury present.)

THE COURT: Ladies and gentlemen, we will be in recess for a few minutes.

(Off the record at 1:56 p.m.)

(The following conversation took place in the judge's chambers.)

MS. SHARUM: There are two issues which we need to take up. I would like a continuance, and we had a Motion to Suppress in which officer Peters testified. And I was told I could not have that suppression hearing transcribed by today. And I think that may now be needed in order to impeach him.

Briefly, I think I would like to have a continuance until such time as Mr. Bailey can do that transcript.

THE COURT: I don't think that would be practical at this stage, so I'll deny the motion.

MS. SHARUM: The other motion that I had objected to was the use of 404(b) evidence against [p. 141] my client, since Mr. Blonigen stated he would not be using that unless I put up a defense. The motion was not ruled upon, and I think it now needs a ruling.

MR. BLONIGEN: Your Honor, what she's referring to is the motion in the file. There are two separate cases, one in '88 and one in '89. One was a Delivery of a Controlled Substance. And a second case was Conspiracy to Deliver, and she pled guilty to both cases.

I filed a Conditional Notice of Prior Bad Acts, but I didn't know what the defendant's defense might be. And clearly, if the defendant wants to claim that she didn't

know this was methamphetamine, that would be admissible under Rule 404(b).

However, I would note that these were both felony convictions within a 10-year period, and that would be admissible for impeachment under Rule 609 as well, Your Honor. It depends, I think, on whether the defendant testifies or not.

A defense is put on if she claims a lack of knowledge of intent. I think they are admissible. A simple claim that it was not hers probably would not make it, as I understand 404(b) but it's spelled out under Rule 609.

[p. 142] Some – again, the questions that I intend to ask, at least at this point are, were you involved in Case No. – whatever case number, were you convicted for the felony of Delivery of a Controlled Substance on this date? The second count and its case number, and were you convicted of Conspiracy to Deliver Methamphetamine on this date?

If I am going to go further than that, I will approach the Court. It's very difficult for me to, as I put in the motion, to – I can't read people's minds. But I think under the circumstances I should be given some notice as far as my case goes, but if various defenses should come up, I can approach before going further than that. But until the evidence becomes obvious, I don't know if it's admissible under Rule 404(b), clearly it's admissible under 609 for impeachment purposes.

THE COURT: It appears to me, the convictions would be admissible for impeachment purposes and perhaps for other reasons. Do you know if she is going to testify?

MS. SHARUM: At this point in time, yes. We are planning to have her take the stand.

THE COURT: I would allow the prior convictions into evidence for impeachment purposes [p. 143] and perhaps for other reasons, depending on what she says.

MS. SHARUM: I would object to any 404(b) evidence brought in as evidence, as well as the details of the crimes or anything of that nature.

MR. BLONIGEN: Your Honor, I would also point out in her statements to DCI, she stated she used as much as half a gram a week, and she bought from David Young on over 20 occasions.

All these may become relevant if she testifies. I will not allude to them until I've approached the Court, but it seems to me that it's very difficult to tell the Court how we are going to use evidence, if we don't know what the defendant is going to say in this regard.

THE COURT: Well, I'll rule on those other issues after she gives her testimony-in-chief.

MS. SHARUM: Okay. Thank you.

THE COURT: Okay.

(The above proceedings, held in chambers, concluded at 2:07 p.m.)

(Back in the courtroom at 2:10 p.m. The jury is present.)

THE COURT: Ms. Sharum.

MS. SHARUM: If we could approach the bench [p. 144] briefly, I have a brief matter I need to bring up for the Court.

(Whereupon, the following bench conference was had.)

MS. SHARUM: I would like to make a motion that Officer Peters not be excused, I may want to recall him.

MR. BLONIGEN: He is just up in my office, Your Honor.

THE COURT: I take it he will be available?

MR. BLONIGEN: Yes. He's available.

(Back in open court, with the jury present.)

MS. SHARUM: The defense would call Sandra Houghton, Your Honor.

SANDRA HOUGHTON,

having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. SHARUM:

Q Would you please state your name for the record.

A Sandra Gay Houghton.

Q And spell your last name for the record?

A H-O-U-G-H-T-O-N.

Q And where do you live, Ms. Houghton?

A I live at 540 1st Street in Mountain View.

[p. 145] Q And as you know we're talking about the day of July 23, 1995. Why don't we start earlier in the day. Do you recall where you were about 2 o'clock that day?

A I was helping John Young and his wife move into their house and helping them clean up.

Q And you said you were helping them clean up. What were you doing over there?

A Packing up some things that belonged to their brother David and cleaning in general so they could move in.

Q Okay. And where were you cleaning in the house?

A I was cleaning in the back room which is – well, you go through the front door and down a hallway and into the back of the house.

Q And did you keep your purse with you the entire time?

A No, I left it in the living room.

Q Now, at some point in time you left that house, didn't you?

A Yes.

Q And how did you – how did you leave the house?

A Well, I was waiting for a ride to my mom's [p. 146] house, and they had happened to come by there, and I asked if he would give me a ride.

Q And what kind of car was David Young driving?

A It was a an older model Cadillac.

Q Two or four door?

A Two door.

Q And you got into that car?

A Yes.

Q And how did you – how did it proceed? I mean, how did you go towards your mother's house?

A We went down to McKinley and then onto the – we stopped at the McKinley Mini-Mart for cigarettes and then on to the interstate towards Evansville.

Q And when you stopped at the McKinley Mini-Mart, did you get out?

A Yes.

And what did you do?

I went in to get cigarettes and use the restroom.

Q And did you take your purse with you?

A No.

Q And at that time, you got back into the car after going to the Mini-Mart?

[p. 147] A Yes.

Q And where did you proceed from there?

A Onto the interstate and towards Evansville.

Q And at some point in time you were pulled over?

A Yes.

Q Who did the officer first approach?

A David Young.

Q And he said some things to David Young, did he not?

A Yes.

Q And do you recall what those statements were?

A I believe he asked him for his driver's license.

Q And did something happen next that you thought was different or unusual?

A Well, they searched him. I didn't know why they were doing that.

Q And did they search you at some point in time?

A A little later on, after they made us out of the car.

Q And did they search the car?

A Yes.

[p. 148] Q And do you recall them searching a person in the car?

A Well, I didn't see them actually start searching the person, but I was not near the car at that time. But when they called me over, yes.

Q And that was your purse?

A Yes.

Q Can you describe that purse?

A My purse is brown leather, and it had a broken zipper.

Q So it was open?

A Yes.

Q Where was the purse located in the car?

A The purse was located on the front seat, between Vanessa and I, on the floor.

Q Now, what name did you originally give the officer?

A Sandra James.

Q And why did you do that?

A Because I was thinking that if my daughter is listening to the scanner, I didn't want her to hear my name on it. And that's what I told the officer also.

Q And after the officer started searching your purse, did he approach you with identification?

[p. 149] A Yes, he did.

Q And what did he ask you about that?

A He asked me if it was mine.

Q And what did you say?

A I said, yes.

Q Did he later approach you with two containers that were in the car?

A Yes.

Q And the purse.

(The witness nodded her head.)

Q Okay. Would you describe those two.

A One was brown, a big brown – I don't know bag-type thing. And the other one was a black wallet type.

Q And what did you tell the officer at that time about those two items?

A I told him the brown one was not mine and that the black one was. I admitted that one was mine.

Q And you did that because you thought that was the right thing to do, just tell the truth?

A Basically.

Q Now, after that, were you arrested?

A Yes.

Q Okay. And did you know what happened to [p. 150] your purse immediately after that?

A No, I found out after I was in jail that it was left in that car. And I'd also – everything had been stolen out of it. I got the purse back but nothing else.

Q Now, you've heard that there were some statements made by you to an Officer Peters of the DCI?

A Yes.

Q Did you speak with Officer Peters on August 1, 1995?

A Yes, I did.

Q And did you talk with him about the evening of July 23rd?

A Yes.

Q And what did you tell him about syringes?

A I told him that there was a syringe in there that was mine. That, I admitted to.

Q And – and did you ever specifically identify which syringe that was?

A No.

Q And did you ever specifically say that the syringe that contained 60cc's – did you ever say anything specifically about that one?

A No.

[p. 151] Q Now, I am going to ask you some questions. You're not a saint are you, Ms. Houghton?

A No.

Q You have had some problems before, haven't you?

A Yes, I have.

Q Have you ever been convicted of a felony?

A Yes, I have.

Q And do you know approximately when that was?

A It was approximately five years ago, I believe.

Q Okay. And what was that for?

A It was for conspiracy and delivery charges, Conspiracy to Deliver.

Q And for what substance?

A Methamphetamine.

Q And you – you admit that you're not a saint. You've done things wrong in the past?

A Yes, I have.

And I would like to go back to Officer Peters' statement, and I am sure that Mr. Blonigen will bring this up. You stated that – Officer Peters stated that you had been using methamphetamine for the past eight years. Is that an accurate –

[p. 152] A No, that is not.

Q What did you –

A I did not say that I have been using for the past eight years, because I haven't.

Q What did you say?

A I said I had used off an on, but I had quit for a long time and just recently started again.

Q And it says here, you said you were Young's friend for approximately 20 years; is that accurate too?

A Yes. I've known the whole family for approximately 20 years.

Q So that part was accurate?

A Yes.

Q Okay. There was also some other parts of this. He talks about syringes. You said you never specifically identified any syringe?

A No, I didn't.

Q But you did to Officer Baldwin, didn't you?

A Yes, I did.

Q Okay. So you told officer Baldwin what you had done wrong?

A Yes, I told him specifically that the black purse was mine; the brown one was not. I don't know whose it was.

[p. 153] Q And do you know how it got into your purse?

A No, I don't.

Q Did you know what potential – I mean, did you know that by admitting to one or other that there would be any difference between what would happen to you?

A No, I didn't.

Q So you were unaware that by saying, "I did this wrong," something different could happen than saying "I did everything," and it would have a different penalty?

A No, I didn't even know what was in the other one until this started up.

Q Okay. Now, there's some other things. How long do you think the conversation between you and Officer Peters was?

A Approximately – maybe 10-15 minutes at the most.

Q And he originally came to talk to you about David Young, didn't he?

A Yes.

Q And so that's what you were originally talking about, was him?

A Yes.

Q You didn't realize you were really talking [p. 154] that much – did you realize what you were talking about that night specifically?

MR. BLONIGEN: Your Honor, she is leading this witness throughout this examination, and I am going to object at this point to the leading questions.

THE COURT: I'll sustain the objection to the last question.

MS. SHARUM: Okay.

Q (By Ms. Sharum) What was your understanding of the conversation? What was it going to be about with Officer Peters?

A My understanding is that he wanted me to say something about David Young, and then it went into what was in the specific bags or whatever you might want to call them, and what was – where they came from,

and where the syringe came from. And I didn't – and what was going to be done with them. And I did not say I was going to use it, because I wasn't going to.

Q Okay. And as you stated before, you didn't ever specifically identify which syringe to Officer Peters, which one –

A No, I didn't.

Q Did you do that with Officer Baldwin?

[p. 155] A Yes. I said the brown case was not mine.

Q Okay.

MS. SHARUM: I have no further questions at this time.

CROSS-EXAMINATION

BY MR. BLONIGEN:

Q Ms. Houghton, we have discussed three items that contained some liquid, and one was the syringe with 60cc's in it that was in the brown bag. Did you know that was there?

A No, I didn't know it was in the brown bag.

Q Then we had a syringe with approximately one-tenth of a gram or 10cc's, was that yours?

A Yes, it was. I admitted that.

Q And was the items within the vial yours?

A Yes. That was in my bag.

Q But you claim you didn't know the brown container was in your purse; is that correct?

A No, I didn't. My purse was unzipped in the front seat and between David Young – his girlfriend, and myself.

Q David Young is a friend of yours?

A I have known him a long time. I wouldn't say he was a good friend, but an acquaintance.

Q Twenty years?

[p. 156] A Yes.

Q Now, you said that you went into the Mini-Mart, got some cigarettes, went to the bathroom, got back to the car and shortly thereafter you were stopped by the police; is that correct?

A That is correct.

Q Did you notice anything unusual during that time period you were in the car after that point in time?

A No, because I was tired and kind of leaning against the door just waiting to get home.

Q Had you used methamphetamine that evening?

A No, I hadn't.

Q When was the last time you used methamphetamine?

A Before that incident. It was probably three days, two or three days, and I just hadn't used it.

Q Now, have you and Mr. Young ever had any personal difficulties?

A No.

Q And other than your purse, there was no other purse in the car, was there?

A I don't know if there was or not.

MS. SHARUM: Objection, Your Honor. I don't see what the relevancy of this line of questioning is.

[p. 157] MR. BLONIGEN: Well, Your Honor, if I can bring up some of the circumstances surrounding this as to credibility of the story she is giving today.

THE COURT: I will overrule the objection to the last question.

Q (By Mr. Blonigen) Neither yourself or the other people had coats on that evening, did they?

A No, I had my coat in my lap.

Q Do you recall – do you recall not having a coat, or do you specifically remember having a coat?

A I had a coat in my lap, and when I was asked to get out of the car, I left it in the car.

Q Mr. Young had no coat?

A I don't know. I wasn't paying that much attention. I was just getting a ride home.

Q So if someone else put this in your purse, they had to do it without your knowledge, before there was ever any sign of trouble with the police; isn't that true?

A Not necessarily, no. Because, like I said, I was half asleep waiting to get home to my mom's. They woke

me up when we came to Johnny Young's house, and that's when I asked for a ride home.

Q Where was your purse?

A When?

[p. 158] Q When the police stopped you.

A On the floor, between Vanessa and myself.

Q How did it end up in the back seat then?

A It was not in the back seat.

Q The officers just made that up?

A Either that or – he also said it was a cloth purse, and it was not. It was a leather purse.

Q And you made some references to your past record. But these are actually two different cases, aren't they? Case No. 10834, you were convicted of Delivery of a Controlled Substance, Methamphetamine; isn't that correct?

A Yes, it is. And I did spend time.

Q And in a separate case you were convicted in a completely different case of Conspiracy to Deliver Methamphetamine; isn't that true?

MS. SHARUM: Objection, Your Honor, these questions have already been asked and answered.

MR. BLONIGEN: Your Honor, I think it should be clarified, these are two separate felony convictions and not one, as might have been indicated by Ms. Sharum's questions. They are out of separate incidents.

THE COURT: I'll overrule the objection.

[p. 159] MS. SHARUM: We will stipulate to that, Your Honor.

Q (By Mr. Blonigen) Now, you stated that you gave a false name to the officer; is that correct?

A Yes, I did.

Q Because you were afraid of what might happen?

A No, that is not what I said. I said that I did not want my daughter to hear my name over the scanner. And that is my words exactly.

Q And again, he has simply got that wrong?

A I believe so.

Q When the police contacted you in their conversations, in fact, you had already been attempting to contact the police; had you not?

MS. SHARUM: Objection, Your Honor, the relevancy of this?

MR. BLONIGEN: Your Honor, she is quite aware of what was going on there, and the fact that she somehow was confused at this interview is pretty ridiculous. And we can show that by the preceding circumstance.

MS. SHARUM: Your Honor, may we approach the bench.

THE COURT: I'll overrule the objection.

[p. 160] You can go ahead, Mr. Blonigen.

Q (By Mr. Blonigen) You have been attempting to contact Officer Bergen at the Casper Police Department?

A Yeah, I have. Because he is a friend, and as a friend only. Not for any other reason that I tried to contact him.

Q Didn't you speak to him?

A Yes, I did.

Q Didn't you offer to act as an informant at that time?

A No, I did not.

MS. SHARUM: Objection, Your Honor.

THE COURT: I'll overrule the objection.

Q (By Mr. Blonigen) After Mr. Peters talked to you about David Young and what had gone on, did you attempt to contact him after that?

A I did.

MS. SHARUM: Objection, Your Honor, to the relevancy of this. Again, I don't think it's relevant.

THE COURT: I'll overrule the objection.

Q (By Mr. Blonigen) That was also to tell him about drug trafficking in the Natrona County area?

A Yes, I had been threatened that if I did not [p. 161] talk to them, I would go to prison, because I had a daughter old enough not to depend on me, and I was scared.

Q You're saying they threatened you?

A That is who – they said, "If you don't say something, you will go to prison on that."

Q You didn't mention that when Ms. Sharum was talking to you?

A I did too. I wrote it down.

Q Just now?

A Uh-huh.

Q And you didn't mention it – when Officer Baldwin testified, he said that you said it wasn't yours. You never told Mr. Baldwin, "I don't know how it got there," did you?

A No. He didn't ask me how it got there.

Q And when you talked to Agent Peters, you never told him anything about people putting things into your purse, did you?

A No. He didn't ask me that either. I just said that it wasn't mine.

Q Didn't he ask you if it came from any other place, other than being in your own?

A The specific brown purse?

Q No, the items in the purse.

[p. 162] A The items in the purse. The black one, yes, was at David Young's house. The brown one, I don't know where it was. And the black one was there. It was mine, and it was there.

Q And you saw the officer remove the brown items; is that correct?

A Yes.

Q But by the time you talked to Agent Peters about this incident, you told him that everything in the purse was yours?

A In the black purse, yes. I also said I didn't know whose the other was –

Q And again –

A – or where it came from.

Q Again, he is mistaken about that?

A No, I didn't say he was. I just said all this stuff in the purse was mine. But not – not the brown purse.

Q And those aren't purses at all. The black item is your wallet, isn't it?

A Well, yeah.

Q So when you said everything in the purse, you meant everything in the large purse?

A No, I didn't. I stated right then and there when I was arrested that that one is not mine.

[p. 163] Q During this time period, did you ever tell Agent Peters anything about – when you spoke to him and told him what happened that night, did you ever suggest to him that someone else had planted these items in your purse?

A No, I didn't, not that I know of. He didn't ask me anything about that, whether they had or not.

Q And you didn't bring it up?

A I just told him I didn't know whose they were, because it wasn't mine.

Q You knew it was part of your charges; didn't you?

A At that time I wasn't too sure what my charges were. I had gone to court for felony possession.

Q You were provided with a copy of the affidavit at that hearing; were you not?

A Not yet, I hadn't been served.

Q You were served with it at your initial appearance in county court. They gave you a piece of paper with the officer's version of what he found on you and what was going on; isn't that right?

A I had – I received a piece of paper that had, like, two small paragraphs on it.

Q And you received that prior to your [p. 164] interview with Mr. Peters on August 1st, didn't you?

A I think so. I am not sure.

Q And your initial appearance on July 24th?

A I am not sure if I got it then or got it sent to me later on. I don't think I had it then, I think I got it later on, when I was going to settle.

Q And it stated clearly that one of the items in the brown bag with the paraphernalia was a syringe loaded with 60cc's; is that correct?

A I did not get a copy of that.

Q Ma'am, you were served with that in open court.

A No, I wasn't. I will have to say no, because all I got was a typed-out version with Count I and Count II on it.

Q Had you ever had any contact with Agent Peters before?

A Before this?

Q Yes.

A No.

Q Had you ever had any difficulties with Mr. Young or Ms. McQueery?

A No difficulties. I just, you know, they're not somebody I hang around with all the time.

[p. 165] Q Okay. Now, you indicated that you were convicted of delivery of methamphetamine. Why would anybody put drugs in your purse when there was no threat from the police or any other person –

MS. SHARUM: Objection.

MR. BLONIGEN: – for what reason?

MS. SHARUM: Objection.

A I have no idea when it happened.

MS. SHARUM: Your Honor, I object to this line of questioning.

THE COURT: I'll overrule this line of questions.

A And my conviction of delivery was five years ago, and since then I have not done anything like that.

Q (By Mr. Blonigen) Since – you have not done anything like what?

A I don't mess around with methamphetamine a lot. I don't deliver. I haven't done anything to that point.

Q Do you recall being interviewed by agent Peters about that?

A After I was jailed?

Q Yes.

MS. SHARUM: Asked and answered, Your Honor.

[p. 166] THE COURT: I'll overrule the objection.

MR. BLONIGEN: Your Honor, may we approach briefly.

(The following bench conference was had out of the hearing of the jury.)

MR. BLONIGEN: The defendant has stated on the witness stand that she rarely uses methamphetamine now, and I would refer the Court to the paragraph in her statement that I am pointing at, at this time.

Given her answer here, I would like to cross-examine on that. But I will not do that unless the Court rules it is admissible.

MS. SHARUM: Your Honor, this is 404(b) evidence and I think it's inadmissible. It is highly prejudicial. And she's already stated she isn't delivering anymore.

MR. BLONIGEN: She also stated that she doesn't mess around with methamphetamine much anymore, and I think that contradicts her statement here, and I should be able to use it for impeachment purposes.

THE COURT: I'll overrule the objection.

(The following proceedings are held in open court, with the jury present.)

[p. 167] Q (By Mr. Blonigen) And so you can give us no reason why anybody would put that in your purse?

A I don't know why, no.

Q You stated earlier that you had only used methamphetamine occasionally recently; is that correct?

A Yes.

Q Do you recall telling Agent Peters that you had a methamphetamine habit of approximately one half gram per week?

A No, not for a week. I couldn't afford that if I did.

Q Did you make the statement to him?

A I don't believe so.

Q So, somebody just for some unknown reason put this in your bag and you had no idea –

A I don't know when it could have happened, when the lights came on or what. Because, like I said, I was leaning against the door half asleep waiting to get home, I don't know. It could have happened when I was in the Mini-Mart and it could have happened when I was cleaning house.

Q But you do readily admit that this smaller syringe or the syringe with the lesser amount in the vial were yours?

[p. 168] A Yes, it was in that black bag. That was mine.

MR. BLONIGEN: That's all the questions I have, Your Honor.

REDIRECT EXAMINATION

BY MS. SHARUM:

Q Ms. Houghton, why did you admit to having the black bag?

A Well, it was in my purse, and it was mine. So I admitted to it.

Q Why did you not admit to having the brown bag?

A Because it was not mine, and to my knowledge it was not in my purse.

Q So you just admitted then to this, why?

A Pardon me?

Q Why did you make these statements?

A Because they were true.

MS. SHARUM: No further questions, Your Honor.

MR. BLONIGEN: I have nothing further, Your Honor.

THE COURT: Thank you. You may resume your seat.

THE WITNESS: Okay.

[p. 169] MS. SHARUM: May we approach the bench again.

(A bench conference was had out of the hearing of the jury.)

MS. SHARUM: What I would like to do is call Officer Peters, but without the transcript of the motion hearing, I don't feel I have that option. If you rule that I have to proceed today – and that is my understanding of the ruling – I would need a continuance for the transcript.

THE COURT: I think you should proceed.

MS. SHARUM: Okay. And for the record I object to that, just so it's on the record.

MR. BLONIGEN: Okay.

(Back in open court, the jury is present.)

MS. SHARUM: The defense rests, Your Honor.

MR. BLONIGEN: Your Honor, we would have very brief rebuttal from Agent Peters.

CHRIS PETERS,

having previously been sworn to tell the truth, testified as follows:

REBUTTAL

DIRECT EXAMINATION

BY MR. BLONIGEN:

Q Do you recall, Mr. Peters, you're still [p. 170] under oath?

A Yes, I do.

Q Agent Peters, have you been present during the defendant's testimony?

A Most of it, yes.

Q When you spoke to the defendant you prepared report, didn't you?

A Yes, I did.

Q And how did you prepare that report? What did you use?

A I took notes during the initial interview, and I typed it from my notes.

Q Now, is there anything in your report that was not in your notes – or anything in your notes that's not in the report?

A No.

Q When was that prepared?

A On the 7th of August, 1995.

Q And is this a copy of that report?

A Yes, it is.

Q Did you ask the defendant about her frequency of methamphetamine use?

A Yes, I did.

MS. SHARUM: Objection, Your Honor.

Q (By Mr. Blonigen) Did she describe it for [p. 171] you?

A Yes, she did.

MS. SHARUM: Your Honor, I am objecting to this line of questioning. If I may approach.

THE COURT: I'll overrule the objection.

Q (By Mr. Blonigen) What did she indicate her level of consumption was?

A She said that she used about a half a gram of methamphetamine a week, and she had been a user for about eight years.

Q Okay. Now, what you put in there – as you described earlier today, you were very pointed in your conversation with her. Did she ever indicate to you that anybody had placed the brown container in her purse?

A No.

Q Again, you testified earlier that you had very pointed questions with her, and I won't go over those again, but was she clear in her questioning to you that all of the items in the purse were hers?

A Yes. I specifically asked her if everything was hers and she said that it was.

Q And when you use the term "purse," was there ever an indication that you were referring to anything other than the larger purse involved?

[p. 172] A No, I said everything. I said the syringes the spoons, everything, is that yours? And yes, it was.

MR. BLONIGEN: That's all the questions I have, Your Honor.

CROSS-EXAMINATION

BY MS. SHARUM:

Q The interview occurred on August 1st; correct, Officer Peters?

A Yes.

Q And you filled out the report on August 7th?

A That was the date it was approved.

Q Okay. When you went in there, you talked with her. Where – I mean, I am looking at this – I am looking at this report, and I think you've seen this report. There's no indication where you say, "Houghton said everything in the purse was hers."

You talk about syringes and the syringe, but at no point do you say, "I asked Houghton if everything in the purse was hers, and she admitted to it." Don't you think that would have been something that would have been appropriate to stick in this report?

A Yes and no.

Q You left that out of the report, didn't you?

A Yes.

[p. 173] Q And you left out – you left out – you left out other things in the report, didn't you? Other questions you asked? Other answers you received?

A For instance?

Q Well, you admitted to leaving out the fact that you asked her the question, "Is everything in that purse yours?" And her saying, "Yes." You left that out of the report? You didn't think that was something important?

A Yes.

Q Okay. Isn't it true that Ms. Houghton told you that she used methamphetamine off and on for the past eight years?

A From the time she first used it until the time she was stopped by Officer Baldwin, she continually used methamphetamine. I don't know what you mean by off and on.

Q Didn't she tell you she used it off and on for the past eight years? And you wrote it down that she used it for eight years?

A Yes.

Q And isn't it true that – isn't it true that – that, she was – that you had talked with her – when you talked with her about the bags and the containers, that you were unclear about what was [p. 174] going on, and she did not understand you?

A No.

Q You, you, you, you, you know for a fact that – you know exactly what she was thinking? You know for a fact that you were not unclear?

MR. BLONIGEN: Your Honor, this is as argumentative this time as it was last time. I renew my objection.

THE COURT: I'll sustain the objection.

MR. BLONIGEN: Just one question, Agent Peters. You did not put everything she said in that report?

A Excuse me, I thought you were finished.

Q (By Ms. Sharum) No. We have talked a little bit about that you were aware that Ms. Houghton was on probation?

A Excuse me. I didn't hear the question.

Q You were aware of Ms. Houghton's prior convictions; were you not?

A No, I was not.

Q You were not aware of them?

A No.

Q Are you aware of them now?

A Yes.

Q Okay. During that time in which she was [p. 175] previously convicted, do you know of any incidents where there was any sort of indication of her taking drugs?

MR. BLONIGEN: Your Honor, I am going to object, unless there's foundation for personal knowledge on the part of the witness.

THE COURT: I will sustain the objection.

MS. SHARUM: I have no further questions, Your Honor.

REDIRECT EXAMINATION

BY MR. BLONIGEN:

Q You didn't put everything down in your report, did you?

A No, I didn't.

Q Do you have a clear memory of this conversation however?

A Yes, I do.

MR. BLONIGEN: That's all the questions I have, Your Honor.

RECROSS-EXAMINATION

BY MS. SHARUM:

Q This conversation took place approximately three months ago; is that correct?

A August 1, 1995.

Q So it would be August, September, October, [p. 176] so approximately three months ago?

A We're now into November.

Q Okay. So approximately three months?

A Yes.

Q And you have conducted several interviews since then; have you not?

A Yes.

Q Okay.

MS. SHARUM: No further questions.

MR. BLONIGEN: I have nothing further for the witness, Your Honor. The State would rest on any further rebuttal.

THE COURT: Thank you. You can be excused.

Ladies and gentlemen the law requires that the attorneys and I meet now to discuss the instructions on the law which will be given to you.

Do you want to proceed this afternoon or bring the jury back tomorrow morning?

MR. BLONIGEN: We're prepared to do whichever the Court would like. It's about 3 o'clock. We are prepared to proceed, if the Court would like to do that or do it in the morning.

MS. SHARUM: The defense is prepared to proceed, or if you would prefer to wait until tomorrow morning.

[p. 177] THE COURT: How long do you think it will take for instructions?

MR. BLONIGEN: Half hour to 45 minutes I would say, approximately.

MS. SHARUM: I would estimate the same amount of time, Your Honor.

THE COURT: Perhaps, so we don't keep the jury waiting around this afternoon, it might be easier to have you come back tomorrow morning at 9 o'clock and proceed with the instructions, the final arguments, and the deliberations.

So we will be in recess until 9 o'clock tomorrow morning.

(The court was in recess at 2:45 p.m.)

STATE OF WYOMING Plaintiff, vs. SANDRA HOUGHTON, Defendant.	)	Seventh Judicial District Natrona County, Wyoming Criminal Case No. 12880

OFFICIAL COURT REPORTER'S
CERTIFICATE OF COMPLETION

(Filed May 20, 1996)

BE IT REMEMBERED that the Original of the Official Court Reporter's Transcripts of the Proceedings in the above-entitled matter was filed with the Clerk of the District Court of the Seventh Judicial District of the State of Wyoming on MAY 20, 1996; pursuant to Rule 2.06 of the Wyoming Supreme Court Appellate Rules, effective November 1, 1992.

This Certificate notices the Clerk of the Wyoming Supreme Court and counsel (or parties) of record of that filing in the trial court; that copies of this Certificate are being mailed to the Clerk of the Wyoming Supreme Court and all counsel (or parties) legally interested in this proceeding thus transcribed and filed herein.

Dated this 20TH day of MAY, 1996.

/s/ Sara C. McDowell
SARA C. McDOWELL,
Official Court Reporter
Seventh Judicial District
State of Wyoming

IN THE DISTRICT COURT
SEVENTH JUDICIAL DISTRICT

Criminal Action No. 12880

STATE OF WYOMING)
) ss.
COUNTY OF NATRONA)

THE STATE OF WYOMING,)
Plaintiff,)
v.)
SANDRA HOUGHTON,)
Defendant.)

COURT REPORTER'S TRANSCRIPT OF PROCEEDINGS

(Filed May 20, 1996)

VOLUME II (II OF II)

BE IT REMEMBERED that the above-entitled matter came before the HONORABLE DAN SPANGLER, a Judge of the Seventh Judicial District of Wyoming, in the District Courtroom, Natrona County Courthouse, Casper, Natrona County, Wyoming.

PROCEEDINGS:

JURY TRIAL: November 6 and 7, 1995.

PROCEEDINGS REPORTED BY:

Sara C. McDowell
Official Court Reporter
Natrona County Courthouse
Room 237
Casper, Wyoming 82601
(307) 235-9255

[p. 178] TUESDAY, NOVEMBER 7, 1995,
MORNING SESSION, 8:50 a.m.

PROCEEDINGS

(The following proceedings take place in the courtroom. Neither the Jury or the Court is present at this time.)

OBJECTIONS TO INSTRUCTIONS

BY MS. SHARUM:

I object to the failure to give the instructions for lesser included offense, citing *Driscoll v. State*, 761 P.2d 980 Wyoming, 1988, which sets out the standard for the giving of a lesser included offense.

Lesser included offenses should be given when a proper request is made when the elements of the lesser included –

(The reporter requested that Ms. Sharum slow down.)

MS. SHARUM: The Court stated that the lesser included instruction should be given when proper request is made, when the elements of a lesser offense are identical to the elements of the greater offense, and evidence was sufficient to justify conviction of a lesser offense.

Proof was sufficiently in dispute in differing the two offenses to allow the jury to [p. 179] consistently find the defendant innocent of the greater offense and guilty of the lesser offense. And that either the State or the defendant could request the instruction.

What is disputed in this matter is the weight of the methamphetamine, and I believe it is disputed to the extent that a lesser included instruction should have been given.

I would also like to object to the failure to give the instruction on the presumption of the law being given in favor of my client's innocence. And I believe this instruction clarifies the other instructions more clearly and should have been given.

I object to the instruction that a witness does not have to produce any evidence on the question of guilt or innocence.

In this case the only witness called was the defendant. And no other evidence was produced and I believe that this would have been an appropriate instruction to have been given.

I object to the instruction of – the instruction that the defendant – that this type of case creates a strong prejudice against the accused, and you must bare in mind the difficulty of the [p. 180] defendant's defense – that this is a very difficult defense in which to defend to.

I object to the failure to give the instruction that the police officers should be given no more credibility than any other witness. And I believe that in this case where most of the witnesses other than the defendant and the state crime lab person were police officers; that this is important for the jury to understand that the police officers' testimony is given the same weight as anybody else's.

I object, again, to the verdict form produced by defense counsel not being given, and this includes the lesser included offense which was stated about that objection for that not having been given.

MR. BLONIGEN: One objection, with regard to the failure to give the lesser included offense on simple possession, and as I noted in chambers yesterday, she has an appropriate lesser included offense only if there's evidence to support it.

However, as the State pointed out in the instructions in conference that the defendant herself while on the stand, admitted that two of the containers were hers, and she knew they were there. [p. 181] The total of those two containers, by uncontradicted weight testimony from the officers and crime lab, were that the two items combined equaled .37 grams, therefore, exceeding the felony weight amount.

Based upon that, the judge ruled that there was not competent evidence to support the giving of the lesser included offense instruction. Even though simple possession is, in fact, a lesser included of felony possession of methamphetamine.

(Whereupon, the following proceedings commenced at 9:02 a.m. with the jury present.)

THE COURT: Ladies and gentlemen, it becomes the duty of the Court to instruct you on the law applicable to this case. It is your duty to follow the law as stated in these instructions.

(The Court reads the instructions to the jury at this time.)

THE COURT: Do you wish to make a closing statement, Mr. Blonigen?

CLOSING STATEMENT

BY MR. BLONIGEN:

Thank you, Your Honor. May it please the Court and counsel.

Do you have any doubt, any reasonable doubt, that this person possessed more than three-tenths of [p. 182] a gram of methamphetamine?

What's apparent in this relatively short trial is that, almost all the facts in the main case are agreed to. There's arguments about details, but there's no doubt, and hasn't been any argument, that this defendant possessed the drug. There's no doubt it's a controlled substance, and that it took place on July 23rd, in this county.

What the defense has disputed throughout this case is whether she knowingly possessed all that drug. She admits she knowingly possessed, at least the items in the black wallet. But she claimed she did not know the items in the brown bag were there in the small brown container that looks like a shaving kit.

But ladies and gentlemen, therein lies the heart of this question, because that is not necessary for your determination. The items she admitted to were over the threshold bounds, which we will discuss in a moment.

But before we discuss that, let's just take a look at this. It's very understandable why the defendant does not argue with the fact, that she, in fact, possessed these

drugs, she just claims she didn't knowingly possess all of them.

[p. 183] The drugs are found in her purse, with her identification. No other person's identification. No indication that anybody else had messed with the purse. There's no movements inside the car when the officer's pulling them over or anything like that. No one else's personal effects were found in the purse.

The defendant knew they were there. One of the best ways we determine that is that she gave a false name. Remember that? She gave a false name to the officer. She said she didn't have an ID, even though the officer found it in her purse. She knew she was in trouble if he searched that purse.

And, in fact, she later said, I told you a false name in case things get bad. Well, she knew things were going to get bad. Because one person knew more than anybody, and that was her, that there were drugs in that purse.

And he goes to the purse itself, and when he pulls out the brown container she doesn't say, "Gee whiz, what is that?" Her statement is, "That's someone else's." And he asks, "Whose?" Well, hem and haw, she's not going to tell him that, or I can't tell you that, words to that effect.

The officer continues and searches the car, [p. 184] finding all those items, ladies and gentlemen. And there is no indication that anyone else put them there, or had control of the purse. And we will talk about the defendant's statement in a little bit.

But if you look at those facts themselves, they establish guilt beyond a reasonable doubt that she was in

possession of all these items. Consider also the syringes are identical. Now true, other people can buy them. But, it seems almost a leap of reason to say you're going to find exactly the same syringes when somebody – I mean, the drug fairy or whoever put those drugs in the purse for the defendant, they just happened to have the exact same sort of syringe.

Did you remember the officer's testimony on the bindles, the small containers that the powdered substance was in? They were identical. So now our person not only has to put drugs in her purse for some unknown reason, but they happen to have identical syringes. They happen to have identical bindles, and they happen to put, not only these in there, but all the other paraphernalia associated with using the drugs. All that was in the purse.

That is fundamentally unbelievable, ladies [p. 185] and gentlemen, that somehow this unknown person, for an unknown reason, would just put all this stuff in her purse, and they all happened to match.

The judge has instructed you, in the first instruction he read you, that you're not to speculate on the evidence, but only draw fair inferences from it.

What is a fair inference from all the circumstance you see right there? That is that she's guilty beyond a reasonable doubt. What is speculation? That somehow, some person, for unknown reasons, at an unknown time, adds these things to her purse.

Let's not forget, she's only saying part of them are a surprise to her, the rest she knows about. Again, she

doesn't tell the officer, "What's that?" She knows immediately what's in there. The State doesn't need to prove to you who owned that. They need to prove to you that she possessed them.

The Court has informed you, through its instructions, that ownership is not part of this case. How did she – if she didn't know what was in there, how come she made the statement to the police officer?

Remember the police when they talked to [p. 186] her – and we alluded to them several times in the testimony – they made affidavits and notes, and it was all right at the time. Not a story that comes after hearing all the other evidence, but those items were recorded at that time.

And on August 1st, Agent Peters talks to her. He talks to the woman who's been trying to contact the police – who actually contacted them afterward, and who wants to act as an informant.

She says, in response to a very pointed question – and let's remember here, she is watching Officer Baldwin take that stuff out of her purse the night before, remember that?

There can be no confusion in her mind as to what Officer Peters was referring to, and you heard him read it directly from the report. He did shortly thereafter.

"All of it's mine. All of the syringes are mine. Yeah, that syringe is mine." She said that during the conversation, and she's referring to the large syringe. She says, "All those things are mine, nobody else gave them to me. Nobody else put them in my purse."

There was no story about, somebody must have put that in my purse. No, that's not the comment. [p. 187] That's not the statement. And, yes, it was not tape recorded. Just as somebody might ask you to write a statement about what happened here these last two days. Well, you wouldn't have it down word for word, but you know what happened here the last two days. And you remember the conversation.

It was only three months ago, which is not that long ago. And they never showed any reason as to why Agent Peters' testimony would be inaccurate. In fact, the defendant has every motive to be forthcoming with that, because she wants to act as an informant.

She doesn't want to lie to the officer and have him find out later and be angry or upset with her. So she has a motive for being more forthcoming the next day. And it's not inconsistent with what she told the officer.

And perhaps the most interesting thing is – and we'll talk about the statement in a minute – but that is that the weight element, which they wish to dispute, is largely undisputed. There was never one question during impeachment, cross-examination or in any other manner challenging the weights.

The officers obtained the weights immediately after the arrest or the state crime [p. 188] lab. That is uncontradicted evidence in this courtroom, ladies and gentlemen.

When you look at this – and this has some additions which I will explain in addition to the exhibit presently in evidence.

You look at these. These are the state crime lab – they did not weigh the one, remember the smaller syringe. They did not weigh that. They simply designated a resin and tested it.

And this is the amount they received from the agency of the drug and the solution itself. And this is what they returned. Because a small amount of that drug is consumed in the testing process, and that's what you see here.

What did the officers do that day? Well, they took an identical syringe, the packaging material in this case, as you've heard in the instructions, and weighed an empty one that is identical.

They then weighed one with the suspect liquid in it. It turned out to be a solution of methamphetamine. They came up with five-tenths of a gram on their scale that, again, the weight was never contradicted in the testimony. Which is exactly the same as what the crime lab came up with, [p. 189] one-one-hundredths, five-tenths of a gram.

They weighed this one the same way, a tenth of a gram. Remember this one? This one is the one in the black wallet that the defendant admitted was hers. This is also uncontested.

The officers noted 20 to 30cc's in this vial that the defendant admitted was hers, .27 grams. So the interesting thing is, is why they were busy trying to fight off this other syringe.

Apparently nobody did the math. Three-hundredths – or three-tenths of a gram is what's required in the

statute. These two items are uncontradicted in the testimony.

And more than that now. While we were talking about this other syringe, nobody did the simple addition of adding this up. And the tests also are corroborated another way.

You will notice that in 60cc's minus the small field test, we have five-tenths of a gram by both the lab – and you'll notice roughly a tenth of a gram for every 10cc's, which is exactly what we come out with here. And this vial is between 20 and 30cc's. You have the same thing.

So despite the overwhelming evidence in fact, this last syringe is hers, it's not [p. 190] necessary to the case. There is no issue here about the weight.

The defendant wants to make an issue about the weight, after she finds out there is a problem for her. It's not a problem for her when she's talking to Delane Baldwin. It's not a problem for her when she's talking to Mr. Peters. But as things go down the road here, and the case developed, and the possession is overwhelming, and they are trying to get out of this three-tenths-of-a-gram situation what do they do? Well, we will get rid of one of the syringes.

But that does not save them. It doesn't save them under the law. There's never been any doubt in this whole case about the weight assigned to these drugs. But moreover, ladies and gentlemen, there's no evidence, credible evidence, that that was not hers and the other not.

We've already talked about the physical circumstances surrounding the case. How possession was proved by the physical circumstances themselves. She was absolutely adamant with Agent Peters that nothing, nothing was in there that was not hers. All the syringes, all the paraphernalia, all the drugs were hers. She was going to use them.

[p. 191] In fact, that is corroborated by the physical evidence of the – remember the recent track mark on her arm.

Reasonable doubt isn't created by the defendant's testimony. It would be easy for defendants within our system if all they had to do is get up on the stand and say, "I didn't do it." That's not reasonable doubt.

The Court has instructed you that if you believe any witness in this case has willfully or falsely or corruptly sworn falsely, you can disregard any of their testimony, unless it's corroborated by other evidence.

As a juror you can pick which evidence to believe and not to believe. The question you must answer is whether the essential elements are met beyond a reasonable doubt. In this case the knowing possession of more than three-tenths of a gram of methamphetamine.

Let's consider credibility for a moment. You know, people testify falsely for their own reasons. They might have a motive. They might simply be wrong. They didn't perceive the item accurately. Or they might have a particular bias in a case, such as a relative or something like that.

[p. 192] Well, the defendant has an obvious bias in this case. She is the one on trial. In addition to that, the defendant has twice before been convicted of felony offenses involving methamphetamine.

Now, she's not guilty of this one because she did it before. But you can consider that in judging the credibility of her testimony. The law has long recognized that those individuals who are previously convicted felons aren't always the most credible witnesses, and you can use it for that purpose to determine whether she is, in fact, credible.

Consider this then. The defendant would have you believe that she's cleaning a house at 1 o'clock in the morning, and that she decides to go visit her mother. And in deciding to go visit her mother, she is taken there by Mr. David Young, a long-time friend.

It's interesting in her testimony – I don't know how 16-year-old Vanessa McQueery ever got in the car, because she certainly never described it. She doesn't describe any unusual movements within the vehicle itself that would account for somebody placing these items in her purse.

It's totally inconsistent with what she told [p. 193] Agent Peters just a week after the offense. And then she says she's getting a ride home. She testified on the stand that her home is in Mills. What's she doing going to Evansville? Do you remember her testimony? She told you where she lived. She lived in Mills. What's she doing going to Evansville?

Regardless of all that, there are obvious problems with her statements. She never explains to you the presence of all the matching paraphernalia in the purses. She never explains why any of these people in the car would do anything – David Young is a friend of 20 years – or that they had access to anything.

She tells you – you know, she leaves out these little things like, "Well, my purse could have been over here or over here." There's no evidence that anybody put anything in her purse. Remember the judge's instruction.

Again, that would be speculation, not a reasonable inference based on the evidence. And suddenly the purse, which was found on the back seat by the officer's testimony – and which was corroborated by the reports he made at the time is now in the front seat.

[p. 194] She says, "I left my purse in the car when I went into the Mini-Mart." Well, if she did that, she had to get money out of her wallet, didn't she? Because there was nothing on her, absolutely nothing on her when the police searched her after the arrest or during the pat-down.

So where did she get the money? Out of her purse. What's in the purse? The brown bag. All these problems with her testimony, ladies and gentlemen. She then says, "Well, I was tired. I didn't watch what was going on." Her attorney implies that Officer Peters is mistaken, and that somehow she misunderstood her client.

On the other hand, what the defendant says is that this officer lied; that Officer Peters lied. For what reason? Their observations were largely contained in notes that

were taken months ago. Yet she wants to say she can come in here, and she can discard their evidence and say, "You got to believe me. That's reasonable doubt, because I got on the stand."

The judge has told you if you believe any witness swore falsely on that stand to any fact, you are at liberty to disregard the rest of their testimony.

[p. 195] A defendant can't find reasonable doubt simply by denying the accusation. Ladies and gentlemen, we have been engaged in a giant smoke screen here.

What does the defense want? They want you to ignore the law. They want you to say whether it's sympathy for the defendant because of her drug problem. And if you have sympathy for her drug problem, that's fine. That's not a bad thing. But we're here to determine a fact. And that fact is whether or not she possessed three-tenths of a gram or more that night.

The overwhelming evidence is that she possessed at least that much. And quite frankly, ladies and gentlemen, there is no credible evidence that she didn't possess this whole amount, which is almost three times what is required by the statute.

When the evidence is uncontradicted, the defendant has been given their right to a fair trial; to a presumption of innocence; to proof beyond a reasonable doubt. But they're not entitled to acquittal simply because they get on the stand and give some half-baked story that would somehow explain only a portion of it.

That doesn't mean she isn't liable for what [p. 196] she admitted. It doesn't mean you have to believe her, and it doesn't mean she is credible.

The overwhelming evidence is that she possessed it in the necessary amount. And now she simply wants to avoid responsibility for her actions.

Your verdict will hold her responsible for her actions. She will be held responsible for what she did. Not anything less, not anything more, simply what the law says: She knowingly possessed more than three-tenths of a gram of this liquid.

THE COURT: Ms. Sharum.

CLOSING STATEMENT

BY MS. SHARUM:

I'm a little bit more nervous so I am going to use the podium, so I have something to stand behind.

I am not asking you to ignore the law. In fact, I want you to pay very close attention to the law. I am not asking that in any way.

And Mr. Blonigen made a lot of statements. And some of them he made, he said my client lives in Mills. That's true. Why was she going to Evansville? Well, she testified why she was going Evansville. She's going there because that's where [p. 197] her mother lives. She was going to her mother's house. She testified to that. That's why she was heading in that direction.

They said, What was she doing cleaning house at 2:00 – 1:00 in the morning? She testified that she got there at

2:00 in the afternoon to help somebody pack up their house and help them clean it.

There's nothing wrong with doing that, and it ran late. And she needed a ride home, and she So she just waited around. And she was tired. It was 1:00 a.m. She was sleepy. And she wasn't paying attention to what was going on in the car. She was leaning against the door, just kind of half-dozing. She was not paying any attention.

Now, whether or not she had to dig into her purse to get some money out –

(The reporter asks Ms. Sharum to slow down.)

MS. SHARUM: I carry a lot of my money in my front pocket. I mean, there's a lot of other explanations to what may have happened there. But let's talk a little about this.

Now, we talked – I told you in the very beginning this was going to be like a jigsaw puzzle, [p. 198] and that you were going to get a lot of pieces. And now, you are going to have to put those pieces together.

Now, what was said here? What went on here? Well, I never said that Officer Baldwin got up there and lied on the stand. I said that Officer Baldwin – you know, Officer Baldwin got up there and told us a story about how he pulled over a car on July 23rd.

He told us how he walked up to the driver of the car, and the driver had the syringe. This is David Young. This is the brother of the person's house she was cleaning, Johnny Young's house. She's helping him move out and helping David Young get all his stuff packed up.

Now, he's giving her a ride home, and he has a syringe. And he sees that syringe – Officer Baldwin sees David Young's syringe. And he goes in there and he says, "Well, you know, I am going to search the car." He searches the car, and he finds the purse.

My client doesn't deny that her purse was in the car. My client got up there and said, "My purse was in the car." She admits to that. She admits to things that would hurt her on the stand. She admits [p. 199] that the purse is in the car.

And he goes through the purse, and he finds her identification. And he finds two other containers, a brown bag and a black bag. And he walks up to my client and she goes, "Yeah, that's my ID."

Now, Officer Baldwin has testified that she said, "in case things got bad." But actually, she tells him that because she was worried her daughter would hear on the scanner.

Now, he pulls out two other containers, and she admits, "That one is mine." She admits to it. She doesn't know whether or not that's going to contain – what kind of a crime by admitting to that it's going to cause her to have. You know, whether or not – what charge would be laid based on what she was admitting to. She admits, "This is mine; this one isn't mine."

Now, the district attorney thinks that he doesn't have to prove she possessed it. Yes, he does. He has to prove that she unlawfully, intentionally or knowingly possessed it.

She didn't knowingly possess it. She didn't intentionally possess this. She doesn't know how it got there. She says she admits to the black bag.

[p. 200] Now, Mr. Blonigen talked about her taking the stand, and she's had prior felonies. So she got up there and she admitted, she's not a saint. She has had her problems. But that's not the issue, whether or not she's been tried, or she's been convicted of those other crimes. She has already paid the price for those.

We are talking about this evening. This one evening, July 23rd. That's what we're talking about. We're not talking about what happened five years ago. We are talking on July 23rd. And she got up on the stand, and she admitted that she had done something wrong. She didn't lie and say, "I didn't do anything wrong that night." She got up there and admitted to doing something wrong. And that's important for you to keep in mind.

I mean, it's not like she got up there and lied about her past record. And it's not like she got up there and lied and said, "I didn't do anything wrong that night." She admits that she did something wrong that night.

Now, this is a serious situation here, and you have got to keep that in mind. I don't envy your job. I wouldn't want your job. I mean, this is a tough job to have. Anytime you're dealing with [p. 201] a criminal matter, it's a tough job. It's very serious. I don't envy that. People's lives could be affected by these decisions. And this is very serious.

Now, what has been proven here today? Well, I think it's pretty safe to say that they have proven here – and

remember, the State must prove this case, not us. I don't have to get up and cross-examine a witness, because everything rests on the State. That's *their* burden.

What have they shown? Well, July 23rd, there was an a traffic stop in Natrona County, Wyoming. Sandra Houghton was in the car. I think that it's safe to say that those elements have been proven.

Knowingly, intentionally, unlawfully possessed a controlled substance in liquid form, methamphetamine, over three-tenths, or .3 grams, same thing. I think in fractions. I don't know, if that's bad, but I think in fractions, but it's three-tenths of a gram.

Now, who did they bring up here to testify about what was in these substances, and what were they? They brought up the state crime lab guy. And what did he do? He told you about his [p. 202] expertise, and he told you about his degrees in chemistry, organic chemistry. He told you that he testified at 30 or 40 trials. And he told you he's done a thousand drug cases. And he told you that he's been certified as an expert in this court. This is who they bring to testify.

And why do these kinds of people need to be brought up? Well, one, they are scientists, and they know what they are doing. They know how to work the lab equipment, how to do this kind of stuff.

And another reason is, you know, the state crime lab man who testified said, "I don't have any personal knowledge of where this came from. I am just telling you what it is, what it weighs. That's all I'm telling you. I'm just telling you what they sent me and what it was."

That's what Officer Baldwin was up here for, to tell you where he got it.

Now, what did he tell you? He told you, "I sent two syringes, and I sent a vial." Okay. First, syringe is the big syringe. He tells you that this syringe weighs .51, and it's methamphetamine. That is what he tested. He weighed it and tested it. That's what he does. He [p. 203] tests the vial. Methamphetamine. Weighs and tests it, .27.

Third syringe – or second syringe, the second thing on the side of the little syringe. Tests it, methamphetamine. And says, "it's residue." That's what's left, residue.

Did they prove through their – that – that there's three-tenths? No, they prove that there's residue, and that's .27. That's what they've proven.

And they talk about – well, you know, they have the DCI agent who weighed the syringes. Well, he's not a scientist. He's not an expert. The man from the state crime lab, he's an expert. It's what he does for a living. He's the expert in this situation. He's the one who testified to what it was and that it weighed .27, residue. That's what these two things weighed. And that's what my client admitted to.

Now, I am not asking you to ignore the law. I am asking you to pay very close attention to the law. Three-tenths, that's it, .3 of a gram, .3. Did they prove .3? Well, what they've proven is .27, and residue. And that's mainly because my client got up on the stand and told you, "This is [p. 204] what I had on me." And that's because my client got up there and admitted to you.

Did they prove the other syringe? No, who's in that car? David Young is in that car. Who else is in that car? Vanessa McQueery. Could they have had access to that purse? Yes. Could they have put something in that purse? Yes. Could somebody else put something in that purse while she was cleaning the house? Yes. Somebody else could have had access to that purse.

Now, they talk a lot about the DCI officer Officer Peters, who testified here today. And even Officer Peters admitted this was a brief conversation. Ten minutes, probably. That's all the conversation took.

Now, my client told you, "I remember this conversation, you know, and I remember what I said." And she admitted to what she said. She said, "I admit that I owned a syringe." And she's getting up here and she's admitting that this is what I did.

Does it meet the statutory requirements of the law? No, it doesn't. And like I said, I don't envy your job. This is serious. This is a serious situation. Anytime you're in court it's serious and [p. 205] it doesn't matter what you're in here for. But let me tell you that with a criminal matter, it's even more serious.

I am asking you to return a verdict of not guilty, because they have not met the statutory requirement. They have not met the .3. That's not what they've proven beyond a reasonable doubt. And I am asking you to return that verdict of not guilty.

REBUTTAL

BY MR. BLONIGEN:

That's an awful narrow perch isn't it? Why do you have to be scientist to run a scale? Do you have to be scientist to run a scale? No. You or I, many of us – I used to work in a grocery store, and we would put the meat on the scale, and it would spit out a result for us, you know, the weight and price. And we'd put it on it and sell it. I was a high school kid. I wrapped the meat and put it on the scale, got the result and sold it.

The officer told you they maintained the scale for one purpose and one purpose only, the weighing of controlled substances.

Now, the defense would have you argue that somehow it's inaccurate, but did you hear one [p. 206] question in the cross-examination of the officer about the scale? Did you hear one question about whether the scale was accurate? No. That was all conceded here during the trial.

Now, that they figure out there is a problem with that, they want to disavow that. But there were no problems with it, ladies and gentlemen. And you can tell by – they say there's no problem with the state crime lab, yet their weighing method produced the same results as the state crime lab did. So now that they've figured out that this story isn't good enough, they want a second story.

The judge told you not to engage in speculation. To think that – that those drugs got in her purse without her knowledge, you might as well say, "Well, it could have

happened three weeks before." She didn't pick up her purse for three weeks.

All these things could be speculated on, but they were not proven by the evidence. And ladies and gentlemen, think about one other point. Obviously, it's been inferred that David Young somehow put these drugs in this purse.

But why would he put the drugs, all the syringes, the packaging material and the syringes [p. 207] that match in her purse that's in the back seat, and then leave one in his front pocket so the officer could see it when he walked up to the car? Of all the fundamental absurdities in this story, certainly that is one.

She says, it doesn't matter about her record. Well, it does matter. It affects her credibility. It affects it substantially. Obviously, as the law has recognized, those that do not take the law seriously might not well take that oath seriously.

She says, "Ignore Officer Peters." Well, ladies and gentlemen, you observed Officer Peters testify. Counsel, wants to say he was confused or somehow didn't understand. You heard what he said on that witness stand, and you observed his demeanor, and how he said it. Was he confused? Did he misunderstand? You make that decision.

Ladies and gentlemen, the point is that counsel offered all these fine theories, but the facts don't support them. The evidence and the facts show that she possessed this requisite amount, and, in fact, that she possessed all of it.

How else – what other logical, reasonable inference, as opposed to speculation, would the [p. 208] evidence show you in this case? You cannot avoid responsibility simply because you regret your decisions later. And you cannot avoid responsibility by constantly coming up with every new story that seems to contradict the evidence before you.

The evidence is clear. It was clear when the officer arrested her. It was clear when they wrote their reports, and it was clear in this courtroom. And only at that point, after hearing all that evidence and finding out she could not make the facts fit, did we hear this defendant's version, as opposed to the two earlier versions.

Only on closing argument do we hear about a problem with the scale, even though there was not one question.

Argument is not reasonable doubt, ladies and gentlemen. The evidence in this case is clear. And we would ask you to return a verdict of guilty.

THE COURT: Ms. Davis, would please you come forward and be sworn to take charge of the jury during its deliberations.

(The bailiff is sworn by the clerk.)

THE COURT: Members of the jury, this case is now submitted to you to agree upon a verdict. [p. 209] You are to stay together under the guard of the bailiff. You must confine your deliberations to the jury room and will communicate with no one, except yourselves and to the bailiff to announce that you have reached a verdict.

You will take with you, to assist you in your deliberations, the instructions given to you by the Court and the exhibits introduced during the trial.

You are not to be given any other material such as newspapers, books, dictionaries or anything else without the Court's permission.

The bailiff will prevent any persons from overhearing your deliberations.

The Court will be in recess until the jury has reached a verdict.

(The court was in recess at 9:41 a.m.)

(Back in the courtroom, with the jury present, at 10:53 a.m.)

THE COURT: Has the jury elected a foreperson and reached a verdict?

MS. TAYLOR: Yes, we have, Your Honor.

THE COURT: Would you please hand your verdict form to the bailiff.

Would you please read the verdict, [p. 210] Ms. Volin.

THE CLERK: Yes, Your Honor. "In the District Court, Seventh Judicial District, Criminal Action No. 12880, State of Wyoming versus Sandra Houghton."

"Verdict: The jury, duly empaneled to try this case finds the defendant guilty of Possession of a Controlled Substance, namely; methamphetamine, in a liquid amount in excess of three-tenths of a gram."

THE COURT: Ladies and gentlemen, is this your verdict?

(The jurors nod their heads.)

THE COURT: The verdict is complete. I want to thank the members of the jury for your services in this case. We all appreciate very much your time and attention. You can discuss your verdict with anyone you wish, but you do not need to do so.

The Court will be adjourned.

MR. BLONIGEN: Your Honor, may the State be heard on another matter after the jury is excused?

THE COURT: Yes. Go ahead, ladies and gentlemen, you can be excused.

(The jury leaves the courtroom at 10:54 a.m.)

[p. 211] MR. BLONIGEN: Your Honor, we would like to be heard on the subject of bond in this matter. In reviewing the file, this was not my file originally, it was Mr. Masterson's. And he was not apparently as familiar with the defendant as I was. I was involved in her prosecutions previously. The bond has been set, I believe, at $1500; is that correct?

MS. SHARUM: Yes.

MR. BLONIGEN: Cash or surety. Your Honor, in obtaining that bond, the defendant failed to disclose to the Court two material facts: One, that she had been convicted of two prior felonies, not one. But more importantly, Your Honor, that she jumped bond on the earlier case. That was never told to the Court.

She jumped bond in her earlier case that I was involved in Case No. 10834. And she was supposed to

appear for District Court Arraignment on August 15, 1989 and failed to appear. We did not recontact her again, until we arrested her for this second drug felony in early 1990.

Given that, Your Honor, the fact that the defendant now knows that the State will be requesting a penitentiary sentence. In addition, Your Honor, she has indicated a – what I would [p. 212] characterize as a desperation to avoid such a sentence.

And certainly her contacts with the police prior to and after the interview by DCI would indicate that. And we believe she is a substantial risk for flight. We would ask that the bond be increased to $5,000 cash or surety.

MS. SHARUM: Your Honor, this is a case in which there's been several court appearances that Ms. Houghton has had to make. We have had two separate Motions to Suppress. She has had to make the DCA as well as the trial. She's shown up for all of these court appearances.

The only court appearance she didn't show up to was a Motion to Continue, and that's because I was unable to contact her. Because it was set within a day of when I requested the setting.

She has had a furlough in this case. She was originally held in jail for a period of time. She had a furlough. She turned herself back in to the jail. I am unaware of her ever jumping bond prior to this situation.

You know, I am not aware she did that. Her sister has put up her property, and she is staying with one of her sisters. Her other sister has put [p. 213] up some property.

This is her family. She does not want to hurt them. I do not think she is a flight risk.

As I mentioned, she's shown up for both Motions to Suppress, her DCA, her trial, and she turned herself back in when she had a furlough. I think bond should continue until sentencing, Your Honor, and we request that.

MR. BLONIGEN: Excuse me. A few facts I will add. You were not present at the hearing she did not appear at, Your Honor. And I would note at that time Ms. Sharum indicated she was having difficulty contacting her.

There is no question, Your Honor, you signed that warrant in 1989, a bench warrant, Failure to Appear.

MS. SHARUM: Your Honor, at the time I was having difficulty contacting her, I only had one of her sisters' phone numbers. And now that I have both of them, I have had a much easier time contacting her, now that I have both phone numbers.

THE COURT: Is your client on probation now?

MS. SHARUM: No, she's not on probation right now.

[p. 214] THE COURT: Considering that she has made her other appearances in this case, I'll continue the same bond that was set earlier.

MR. BLONIGEN: Your Honor, we will request a Presentence Investigation.

MS. SHARUM: Thank you, Your Honor.

THE DEFENDANT: Thank you.

THE COURT: If there is nothing else for now we'll be adjourned.

(Proceedings concluded at 10:59 a.m.)

[p. 215] STATE OF WYOMING)
) ss.
COUNTY OF NATRONA)

CERTIFICATE

I, Sara C. McDowell an Official Court Reporter of the Seventh Judicial District of Wyoming, do hereby certify that the foregoing constitutes a full, true, complete, and correct transcript of the trial in the above-numbered and entitled cause, wherein the defendant was found guilty.

Dated this 20TH day of MAY, 1996.

/s/ Sara C. McDowell
Sara C. McDowell,
Official Court Reporter

JURY INSTRUCTIONS

INSTRUCTION NO. 1

(Filed Nov. 07, 1995)

LADIES AND GENTLEMEN OF THE JURY: I would like to read to you a general instruction before the commencement of this trial.

The functions of the Court and jury are distinct, and each is supreme in its own domain.

It is the exclusive province of the Court to determine the admissibility of all evidence, permitting proper evidence to go to the jury and excluding from the jury improper evidence, to define the issues and to instruct you as to the law applicable to the issues.

On the other hand, it is the exclusive province of the jury to weigh and consider all evidence which is presented to it; to determine the credibility of all witnesses who testify before you, and from such evidence and testimony, to determine the issues of fact in this case.

This duty you shall perform with sincere judgment and sound discretion, uninfluenced by sentiment, conjecture, or by passion or prejudice against any of the litigants in this case, or by public opinion or public feeling. The litigants have the right to demand and expect that you will conscientiously and dispassionately consider and weigh the evidence and apply the law of the case, and that you will reach a just verdict, regardless of the consequences. That verdict must express the individual opinion of each juror.

You are the exclusive judges of the facts and of the effect and value of the evidence, but you must determine

the facts from the evidence produced here in Court. If any evidence is admitted and afterwards is ordered by me to be stricken out, you must disregard entirely the matter thus stricken, and if any counsel intimates by any of his questions that certain hinted facts are, or are not, true, you must disregard any such intimation and must not draw any inference from it. As to any statement made by counsel in your presence concerning the facts of the case, you must not regard such a statement as evidence; provided, however, that if counsel for all parties stipulate to any fact, you are to regard that fact as being conclusively proved; and if in the trial any party admits a fact to be true, such admission may be considered by you as evidence in the case.

At times throughout the trial the Court may be called upon to pass on the question whether or not certain offered evidence might properly be admitted. You are not to be concerned with the reasons for such rulings and you are not to draw any inferences from them. Whether offered evidence is admissible is purely a question of law. In admitting evidence to which an objection is made, the Court does not determine what weight should be given such evidence; nor does it pass on the credibility of the witness. As to any offer of evidence that may be rejected by the Court, you, of course, must not consider the same; as to any question to which an objection is sustained, you must not conjecture as to what the answer might be or as to the reason for the objection.

The jury is the sole judge of the credibility of the witnesses, and of the weight to be given their testimony. You should take into consideration their demeanor upon the witness stand, their apparent intelligence or lack of

intelligence, their means of knowledge of the facts testified to, the interest, if any, which any witness may have in the outcome of this trial, the prejudice or motives, or feelings of revenge, if any, which have been shown by the evidence. In so doing, you may take into consideration all of the facts and circumstances in the case and give such weight as you think the same are entitled to, in the light of your experience and knowledge of human affairs.

Given:
/s/ Dan Spangler

INSTRUCTION NO. 2

LADIES AND GENTLEMEN OF THE JURY: It becomes the duty of the Court to instruct you concerning the law applicable to this case. It is your duty as jurors to follow the law as stated to you in these instructions.

The attitude and conduct of jurors at the outset of their deliberations are a matter of considerable importance. It is rarely productive or good for a juror, upon entering the jury room to make an emphatic expression of his or her opinion on the case or to announce a determination to stand for a certain verdict. Your verdict should only be arrived at after careful and thoughtful deliberation and it may be helpful to you to listen to and consult with each other and to discuss the evidence freely and fairly and the deductions to be drawn therefrom in a sincere effort to arrive at a just verdict. The final test of the quality of your service will lie in the verdict which

you return to the Court, not in the opinions any of you may hold as you retire. Have in mind that you will make a definite contribution to efficient judicial administration if you arrive at a just and proper verdict in this case. To that end, the Court reminds you that in your deliberations in the jury room there can be no triumph excepting the ascertainment and declaration of the truth.

If you believe from the evidence in this case that any witness willfully and corruptly swore falsely to any material fact in this case, then you are at liberty to disregard all or any part of that testimony, except insofar as the same has been corroborated by other and credible evidence, and the facts and circumstances proved during the trial.

In determining any of the questions before you in this case, you should be governed solely by the evidence. You should not indulge in conjecture or speculation unsupported by the evidence. However, you may consider the evidence presented to you and the reasonable inferences and conclusions which may be drawn therefrom in the light of your knowledge, observation and experience in the affairs of life.

If in these instructions any rule, direction or idea be stated in varying ways, no emphasis thereon is intended, and none must be inferred by you. For that reason, you are not to single out any certain sentence, or any individual point or instruction, and ignore the others, but you are to consider all the instructions as a whole, and are to regard each in the light of all the others. The order in

which the instructions are given has no significance as to their relative importance.

Given:
/s/ Dan Spangler

INSTRUCTION NO. 3

YOU ARE INSTRUCTED that the law places the burden upon the State to prove the defendant is guilty. The law does not require the defendant to prove ~~his~~ [her] innocence. Accordingly, you must assume that the defendant is innocent unless you are convinced beyond a reasonable doubt and from all of the evidence in the case that [s]he is guilty.

You should evaluate the evidence admitted in this case and determine the innocence or guilt of the defendant entirely in accordance with these instructions. The test you must us is this: if you have a reasonable doubt as to the truth of any of the claims made by the State, you should find the defendant not guilty. If you have no reasonable doubt as to the truth of any of them you should find the defendant guilty.

GIVEN:

/s/ Dan Spangler
JUDGE

INSTRUCTION NO. 4

YOU ARE INSTRUCTED that the Information in this case provides as follows:

"Comes Now the State of Wyoming, and informs the Court and gives the Court to understand that SANDRA HOUGHTON, late of the County aforesaid, on or about the 23rd day of July, 1995, in the County of Natrona, in the State of Wyoming, did unlawfully, knowingly or intentionally possess a controlled substance, namely: Methamphetamine, Schedule II, W.S. 1977, as revised, § 35-7-1016(d), and in a liquid amount greater than three-tenths (0.3) of a gram, in violation of W.S. 1977, as amended, § 35-7-1031(c)(iii). Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Wyoming."

GIVEN:

/s/ Dan Spangler
JUDGE

INSTRUCTION NO. 5

The necessary elements of the crime of Possession of a Controlled Substance, namely: Methamphetamine, are:

1. That on or about July 23, 1995, in the County of Natrona, State of Wyoming;

2. The Defendant, SANDRA HOUGHTON;

3. Did unlawfully, knowingly or intentionally possess a controlled substance, namely: Methamphetamine;

4. In a liquid form;

5. The weight of the controlled substance in a liquid form exceeding three-tenths (0.3) of a gram.

If you find from your consideration of all of the evidence that any of these elements has not been proved beyond a reasonable doubt, then you should find the Defendant not guilty.

If, on the other hand, you find from your consideration of all of the evidence, that each of these elements has been proved beyond a reasonable doubt, then you should find the Defendant guilty.

GIVEN:

/s/ Dan Spangler
JUDGE

INSTRUCTION NO. 6

YOU ARE INSTRUCTED that methamphetamine is a controlled substance under the laws of the State of Wyoming.

GIVEN:

/s/ Dan Spangler
JUDGE

INSTRUCTION NO. 7

For the purpose of determining the weight of the controlled substance described in Instruction 6, there shall be included the weight of the controlled substance and the weight of any carrier element, cutting agent, diluting agent or any other substance excluding packaging material.

GIVEN:

/s/ Dan Spangler
JUDGE

INSTRUCTION NO. 8

YOU ARE INSTRUCTED that possession, as the term is used in these instructions, means that a person either individually or jointly with another, exercised dominion and control over the substance. This may be proven by direct or circumstantial evidence and does not require proof of ownership of the substance.

GIVEN:

/s/ Dan Spangler
JUDGE

INSTRUCTION NO. 9

YOU ARE INSTRUCTED a person is qualified to testify as an expert if he has special knowledge, skill, experience, training or education sufficient to qualify him as an expert on the subject to which his testimony relates.

Duly qualified experts may give their opinions on questions in controversy at a trial. To assist you in deciding such questions, you may consider the opinion with the reasons given for it, if any, by the expert who gives the opinion. You may also consider the qualifications and credibility of the expert.

You are not bound to accept an expert opinion as conclusive, but should give to it the weight to which you find it to be entitled. You may disregard any such opinion if you find it to be unreasonable.

GIVEN:

/s/ Dan Spangler
DISTRICT COURT JUDGE

INSTRUCTION NO. 10

YOU ARE INSTRUCTED that in arriving at a verdict in this case, the subject of penalty or punishment is not to be discussed or considered by you, as that matter is one that lies solely with the Court, and must not in any way

affect your decision as to the innocence or guilt of the Defendant.

GIVEN:

/s/ Dan Spangler
JUDGE

INSTRUCTION NO. 11

Your verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree thereto. Your verdict must be unanimous.

It is your duty, as jurors, to consult with one another and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine your own views and change your opinion if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors, or for the sole purpose of returning a verdict.

You are not partisans. You are judges – judges of the facts. Your sole interest is to ascertain the truth from the evidence in the case.

GIVEN:

/s/ Dan Spangler

STATE OF WYOMING)
) SS.
COUNTY OF NATRONA)

IN THE DISTRICT COURT
SEVENTH JUDICIAL DISTRICT
Criminal No. 12880/MB-v

STATE OF WYOMING,)
Plaintiff,)
vs.)
SANDRA HOUGHTON,)
Defendant.)

MOTION FOR DISMISSAL

(Filed Nov. 7, 1995)

COMES NOW Michael A. Blonigen, Assistant District Attorney, and respectfully moves the Court for an order dismissing Count I of the Information filed herein on the above-entitled matter. As grounds for this Motion, your movant informs the Court that it would be in the best interest of the State of Wyoming to do so.

DATED this 6th day of November, 1995.

/s/ Michael A. Blonigen
Michael A. Blonigen,
Assistant District Attorney

ORDER FOR DISMISSAL

THIS MATTER having come before the Court upon the above Motion, and the Court finding that good cause exists for the granting of the same;

NOW, THEREFORE, IT IS HEREBY ORDERED that the above-entitled matter be, and the same hereby is, dismissed.

DONE IN OPEN COURT this 6th day of November, 1995.

BY THE COURT:

/s/ Dan Spangler
DISTRICT COURT JUDGE

STATE OF WYOMING)
) SS.
COUNTY OF NATRONA)

IN THE DISTRICT COURT
SEVENTH JUDICIAL DISTRICT
Criminal No. 12880/MB-v

STATE OF WYOMING,)
Plaintiff,)
vs.)
SANDRA HOUGHTON,)
Defendant.)

VERDICT

(Filed Nov. 7, 1995)

THE JURY, duly empaneled to try this case, finds the Defendant:

(✓) GUILTY of Possession of a Controlled Substance, namely: Methamphetamine, and in a liquid amount in excess of three-tenths (0.3) of a gram.

( ) NOT GUILTY of Possession of a Controlled Substance, namely: Methamphetamine, in a liquid amount in excess of three-tenths (0.3) of a gram.

/s/ Heather D. Taylor
FOREPERSON

IN THE DISTRICT COURT FOR
NATRONA COUNTY, WYOMING
SEVENTH JUDICIAL DISTRICT
DOCKET NO. 12880

THE STATE OF WYOMING,)
PLAINTIFF,)
)
VS.)
SANDRA HOUGHTON,)
)
DEFENDANT.)

MOTION FOR JUDGMENT OF ACQUITTAL

(Filed Nov. 13, 1995)

COMES NOW, the Monica A. Sharum, attorney for the Defense, respectfully moves this Court for an Order of Judgment of Acquittal in the above-captioned matter in accordance with Rule 29(c) or the Wyoming Rules of Criminal Procedure by and for the reasons that the jury verdict was based on speculation and on conjecture and does not show that the Defendant was guilty of the offense charged.

THEREFORE, the Defendant prays for the Judgment of Acquittal to the charge herein.

DATED this 13 day of November, 1995.

/s/ Monica A. Sharum
MONICA A. SHARUM
Assistant Public Defender

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a true and correct copy of the foregoing MOTION TO JUDGEMENT OF ACQUITTAL AFTER JURY VERDICT on the attorney for the State of Wyoming by delivering the same to the Office of the District Attorney this 13 day of September, 1995.

/s/ Monica A. Sharum
Monica A. Sharum

IN THE DISTRICT COURT FOR
NATRONA COUNTY, WYOMING
SEVENTH JUDICIAL DISTRICT
DOCKET NO. 12880

THE STATE OF WYOMING,)
PLAINTIFF,)
VS.)
SANDRA HOUGHTON,)
DEFENDANT.)

MOTION FOR A NEW TRIAL

(Filed Nov. 13, 1995)

COMES NOW, the Monica A. Sharum, attorney for the Defense, respectfully moves this Court for an Order for a new trial in the above-captioned matter, for the following reasons:

1. The court erred in denying defendants motion for acquittal.

2. The verdict is contrary to the weight of the evidence.

3. The court erred in not granting defense request for the jury instructions on lesser included offenses.

THEREFORE, the Defenadant prays for a New Trial.

DATED this 13 day of November, 1995.

/s/ Monica A. Sharum
MONICA A. SHARUM
Assistant Public Defender

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a true and correct copy of the foregoing MOTION FOR NEW TRIAL on the attorney for the State of Wyoming by delivering the same to the Office of the District Attorney this 13 day of September, 1995.

/s/ Monica A. Sharum
Monica A. Sharum

[p. 1] STATE OF WYOMING)
) ss.
COUNTY OF NATRONA)

IN THE DISTRICT COURT
SEVENTH JUDICIAL DISTRICT
Criminal Action No. 12880

THE STATE OF WYOMING,)
Plaintiff,)
v.)
SANDRA HOUGHTON,)
Defendant.)

MOTION HEARING

(Filed Dec. 01, 1995)

The above-entitled matter came on for hearing on MOTION HEARING before the HONORABLE DAN SPANGLER, a Judge of the Seventh Judicial District of Wyoming, in the District Courtroom, Natrona County Courthouse, Casper, Natrona County, Wyoming, at the hour of 8:36 a.m., on the 30TH of NOVEMBER, 1995.

APPEARANCES:

For the State: MICHAEL A. BLONIGEN, Casper, Wyoming, Assistant District Attorney.

For the Defendant: MONICA A. SHARUM, Casper, Wyoming, Assistant Public Defender.

The defendant also appeared in person.

[p. 2] THURSDAY, NOVEMBER 30, 1995, MORNING SESSION, 8:36 a.m. PROCEEDINGS

THE COURT: The Court will come to order in the case of the State of Wyoming versus Sandra Hougton, Criminal Action No. 12880. Ms. Sharum.

MS. SHARUM: Your Honor, we're here on two motions today, a Motion for Judgment of Acquittal and a Motion for a New Trial.

The first motion, the Motion for Judgment of Acquittal, is based on the defense's assertion that the jury could not have found this – found the – my client guilty beyond a reasonable doubt, without speculation and conjecture, and did not, in fact – did, in fact, speculate on this particular case. And the verdict of jury should be set aside.

The other motion, the Motion for New Trial, is based on those same facts, that the jury could not have found my client guilty beyond a reasonable doubt, without speculation or conjecture; that the verdict was contrary to the weight of evidence, and also it was based upon the facts that the jury instruction for lesser included offense was not given.

THE COURT: It appears to me that there was substantial evidence to support the verdict of the [p. 3] jury, and that there was not evidence which would have supported the giving of the requested jury instruction on lesser included offenses. Therefore, I'll deny the motions.

MS. SHARUM: Thank you, Your Honor.

THE DEFENDANT: Thank you.

(Proceedings concluded at 8:38 a.m.)

[p. 4] STATE OF WYOMING)
) ss.
COUNTY OF NATRONA)

CERTIFICATE

I, Sara C. McDowell, an Official Court Reporter of the Seventh Judicial District of Wyoming, do hereby certify that the foregoing constitutes a full, true, complete, and correct transcript of the proceedings in the above-numbered and entitled cause, wherein the defendant was heard on two motions.

Dated this 1ST day of DECEMBER, 1995.

/s/ Sara C. McDowell
Sara C. McDowell,
Official Court Reporter

STATE OF WYOMING,)
) SS.
COUNTY OF NATRONA)

IN THE DISTRICT COURT
SEVENTH JUDICIAL DISTRICT
Criminal No. 12880/MB-v

STATE OF WYOMING,)
Plaintiff,)
vs.)
SANDRA HOUGHTON,)
Defendant.)

ORDER

(Filed Dec. 12, 1995)

THIS MATTER having come before the Court upon the Defendant's Motion for New Trial and Acquittal, and the Defendant appearing in person and with her attorney, Monica Sharum, and the State being represented by Michael A. Blonigen, Assistant District Attorney, and the Court having reviewed the matter finds that said Motion should be denied;

NOW, THEREFORE, IT IS ORDERED that the above-stated Motion be, and the same hereby is, denied.

DONE IN OPEN COURT this 12th day of December, 1995.

BY THE COURT:

/s/ Dan Spangler
DISTRICT COURT JUDGE

APPROVED AS TO FORM:

/s/ Monica A. Sharum
Monica Sharum,
Attorney for Defendant

/s/ Michael A. Blonigen
Michael A. Blonigen,
Assistant
District Attorney

STATE OF WYOMING)
) ss.
COUNTY OF NATRONA)

IN THE DISTRICT COURT
SEVENTH JUDICIAL DISTRICT
Criminal Action No. 12880

THE STATE OF WYOMING,)
Plaintiff,)
v.)
SANDRA HOUGHTON,)
Defendant.)

SENTENCING

(Filed Mar. 13, 1996)

The above-entitled matter came on for hearing on SENTENCING before the HONORABLE DAN SPANGLER, a Judge of the Seventh Judicial District of Wyoming, in the District Courtroom, Natrona County Courthouse, Casper, Natrona County, Wyoming, at the hour of 8:28 a.m., on the 12TH of MARCH, 1996.

APPEARANCES

For the State: MICHAEL A. BLONIGEN, Casper, Wyoming, Assistant District Attorney.

For the Defendant: MONICA A. SHARUM, Casper, Wyoming, Assistant Public Defender.

The defendant also appeared in person.

[p. 2] TUESDAY, MARCH 12, 1996, MORNING SESSION, 8:28 a.m. PROCEEDINGS

THE COURT: The Court will come to order in the case of the State of Wyoming versus Sandra Houghton, Criminal Action No. 12880. I've received a Presentence Report in this case. Have you received a copy of that, Ms. Sharum?

MS. SHARUM: Yes, I have.

THE COURT: Do you have anything further that you would like to present?

MS. SHARUM: Yes, sir. As a – as a matter prior to any sentencing, we would like to ask for a continuance. Ms. Houghton has informed me that her daughter will be in later this week, and she would like to see her. Also, that she still needs to do packing and storing of some of her personal property.

And she also informs me that today is her daughter's birthday as well, Your Honor.

MR. BLONIGEN: Your Honor, I think we should proceed with sentencing at this time. I will note – and I don't know if this has been provided to the Court. It was delivered to our office yesterday. But I would note, in any event, Your Honor, her bond has been pulled.

[p. 3] Has the Court been provided one of these?

(Mr. Blonigen gives a document to the Court.)

Ms. Vitamvas informed me yesterday, and provided the document I've given to the Court, revoking the defendant's bond. She is no longer on that bond. And, of course, pending what happens here today, Your Honor,

would not be eligible for release at this time, absent the posting of a new $1500 bond, in any event. So I don't think that a continuance is warranted in any event, Your Honor.

THE COURT: Well, I think it would be best to proceed at this time. And I'll deny the Motion for Continuance.

MS. SHARUM: Yes, sir. Your Honor, as you may recall this was a case that went to trial in November of last year. I would like to – what I believe would be an appropriate sentence in this case would be to suspend a penitentiary sentence, that was a two- to three-year penitentiary sentence on Ms. Houghton, and then require her to complete the Community Alternatives program.

And perhaps, if necessary under the supervision – and we'll let the probation officer decide this – any appropriate counseling that would [p. 4] be required, including inpatient treatment, if that is what is appropriate.

Your Honor, when you look through this record, I would note that most of the offenses here, other than the two – the two offenses that occurred in June of 1989, and January of 1990 – were, for the most part, traffic-type offenses.

These two offenses, the Conspiracy to Deliver or an attempt or conspiracy, in violation of the Controlled Substance Act, ran concurrent. She received two years of probation, six months of jail, suspended, and she completed five months at CAC. I believe that perhaps a longer term at CAC might be helpful to her. I think that at

CAC she can get the counseling, that she could need. And it could be very useful for her.

When you look through here, I think that she, perhaps, is coming to the realization that counseling is something that she needs. When – under the Health section, under Substance Abuse, when the defendant was asked about whether or not she is an alcoholic, she said, "I believe I am."

I think that this shows an indication that she's beginning to realize that she is having a problem with this, and these are things that she [p. 5] needs help with.

When you look through the Presentence Investigation, the probation officer talks about the fact that at one time she had a steady job. She had steady employment. Perhaps CAC can help her get back into that type of situation, where she could have a steady-type employment. The suspended sentence would be something to hold over her head, that she has to complete; that she has to do a good job.

I believe that she should also be sentenced to, at least, two years – maybe even three years – of supervised probation, under the usual terms and conditions, that she lead a worthy and law-abiding life, violate no federal, state, or local laws; that she consume no alcohol, no controlled substances; that she take counseling as ordered by probation, whether that be in or outpatient treatment – and that is what I think the probation officer should decide; that she do any community service that the probation department deems appropriate or necessary, and that she pay any restitution as the probation officer sets it up and deems it to be necessary.

Your Honor, I think this would be more appropriate in this case. When you look back at [p. 6] this case, taking the evidence, I guess, in the best light of the State, there were two syringes involved in this. I think this is an indication of somebody who has a drug problem and somebody who needs our help.

I think a suspended sentence, so that she has something held over her head; that if she doesn't do this right, she's going to the penitentiary. And then make her go to Community Alternatives; make her take the treatment, whether it be in or outpatient treatment, as the probation officer deems appropriate, would be the most appropriate sentence in this case, Your Honor. And that is what we would ask for today.

MR. BLONIGEN: Your Honor, she's known a penitentiary sentence has been hanging over her head since 1989, yet she never stopped dealing in drugs. She never stopped using. She never stopped associating with those people, and she chronically broke the law virtually every day, every week, for six years.

The indications were approximately 100cc's of liquid of methamphetamine, much more than a single, individual dose, multiple items of paraphernalia, including many used and unused [p. 7] syringes. Unlike Ms. Sharum, to me it clearly – the evidence clearly indicated that they were probably selling units of methamphetamine for personal use.

This is her third methamphetamine related felony, Your Honor. After those felonies, she had a string of three theft convictions. She is 50 years old. She has been

involved in the illegal drug I.V. use, in particular, since 1989.

She states that she stopped using I.V. in June, Your Honor. However, Your Honor, this offense took place July 23, 1995. She states that she never sold drugs, yet she's convicted of two felonies connected with the delivery of drugs.

Your Honor, there is not much in her Presentence Investigation that you can really take to heart. She, in her confessions, admitted all the drugs were hers. Later, in the trial, she admitted at least part of them were hers. Now, in the Presentence Investigation, none of them were hers.

This defendant has had four months to take care of what she says is just a drug problem, or what counsel says is a drug problem. We have not had one meaningful step towards any sort of treatment or anything else undertaken. Not only is [p. 8] it inappropriate to give probation on a third methamphetamine related offense, Your Honor, we believe it is particularly inappropriate when probation is not likely to succeed.

This is not a young person who has made a mistake in life. This is a person who has become deeply ingrained in the drug culture and in the criminal justice system.

We would recommend the Court sentence her to 30 to 36 months in the Wyoming State Penitentiary.

THE COURT: Ms. Houghton, you have the right to address the Court or present any further matters in the extenuation or mitigation. Do you wish to make any statement?

THE DEFENDANT: Yes. I did never sell drugs, for sure. I have been going to NA recently, but I wasn't aware I should inform anybody about it. And as far as my bond being pulled, I haven't heard anything about it. And everybody knows where I am at, and my family does, and the probation department has my address.

Also, one more thing, I just have a few things left that I have to get put away in storage. I didn't have a truck to use yesterday. I packed, and everything like that. I just need to have a few [p. 9] hours to get them put away, so that I have them when I get out of wherever I am going. And I'd like to call my daughter. She's in North Dakota.

THE COURT: Ms. Houghton, it's my duty to advise you that you have the right to appeal, and that you must file your Notice of Appeal within 30 days after the filing of the Judgment and Sentence in this case. And if you are unable to pay for the cost of appeal, you have the right to apply for leave to appeal informa pauperis, to have appointed counsel represent you on the appeal, and to have the Clerk of Court file the Notice of Appeal.

It's the order of this Court that you be sentenced to the Wyoming State Women's Center for a term of not less than two years and not more than three years, with credit for time previously served.

And I think it would be in the interest of justice, particularly concerning the bond situation, that Ms. Houghton be placed in the sheriff's custody at this time. If there's nothing else for now, we'll be adjourned.

(Proceedings concluded at 8:39 a.m.)

[p. 10] STATE OF WYOMING)
) ss.
COUNTY OF NATRONA)

CERTIFICATE

I, Sara C. McDowell, an official Court Reporter of the Seventh Judicial District of Wyoming, do hereby certify that the foregoing constitutes a full, true, complete, and correct transcript of the proceedings in the above-numbered and entitled cause, wherein the defendant was sentenced.

Dated this 13TH day of MARCH, 1996.

/s/ Sara C. McDowell
Sara C. McDowell,
Official Court Reporter

STATE OF WYOMING)
) SS
COUNTY OF NATRONA) IN THE DISTRICT COURT
SEVENTH JUDICIAL
DISTRICT

STATE OF WYOMING,) Criminal No. 12880/MB
Plaintiff,)
vs.)
SANDRA HOUGHTON,)
Defendant.)

JUDGMENT AND SENTENCE

(Filed Mar. 25, 1996)

THIS MATTER having come before the Court on the 12th day of March, 1996, and the Defendant having appeared in person and with her attorney, Monica Sharum, and the State of Wyoming being represented by Michael A. Blonigen, Assistant District Attorney, and the Defendant having previously been found guilty by a jury of the charge herein of Possession of a Controlled Substance, to-wit: Methamphetamine, in liquid form in an amount greater than three-tenths ($^{3}/_{10}$ths) of one (1) gram, a felony, in violation of W.S. 1977, as amended, §35-7-1031(c)(iii); the Court hereby makes the following findings:

1. That the Defendant was represented by competent counsel and was satisfied with the performance of counsel;

2. That the Defendant did testify on her own behalf;

3. That the Court did have before it for its consideration the Presentence Investigation Report prepared by the Department of Corrections, Probation and Parole; and

4. That restitution is not an issue in this matter.

AND THE COURT having heard the arguments of the parties regarding sentencing and having considered probation;

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the Defendant be remanded to the custody of the Sheriff of Natrona County, Wyoming, where she shall await transfer to the Wyoming Women's Center, located at or near Lusk, Wyoming, where she shall begin serving a term of not less than two (2) years nor more than three (3) years, with credit off the minimum and maximum sentence for fifty-nine (59) days previously served in the Natrona County Detention Center.

IT IS FURTHER ORDERED that if a surety bond has been posted herein, it shall be discharged and exonerated.

DONE IN OPEN COURT this 22nd day of March, 1996.

BY THE COURT:

/s/ Dan Spangler
JUDGE SPANGLER

APPROVED AS TO FORM:

/s/ Monica A. Sharum
Monica Sharum
Attorney for
Defendant

/s/ Michael A. Blonigen
Michael A. Blonigen,
Assistant District
Attorney

IN THE DISTRICT COURT
SEVENTH JUDICIAL DISTRICT
CRIMINAL ACTION NO 12880

THE STATE OF WYOMING,)
PLAINTIFF,)
VS.)
SANDRA HOUGHTON,)
DEFENDANT.)

NOTICE OF APPEAL
(Filed Mar. 26, 1996)

COMES NOW, the Appellant (Defendant), Sandra Houghton, by and through his counsel, and pursuant to Rule 2.01 of the Wyoming Rules of Appellate Procedure (1992 Rev.), hereby gives notice of his intention to appeal to the Wyoming Supreme Court the Judgment and Sentence of the Court, by the Honorable Judge Spangler, Seventh Judicial District.

DATED this 26 day of March, 1996.

/s/ Monica A. Sharum
MONICA SHARUM

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 27 day of March, 1996 a true and correct copy of the foregoing to be served upon the following by depositing the same in the U.S. Mail, postage prepaid addressed as follows:

District Attorney's office
200 N. Center, Suite 300
Casper, WY 82601

Attorney General
State of Wyoming
123 Captiol Bldg
Cheyenne, WY 82002

Judy Pacheco
Wyoming Supreme Court
Clerk
Wyoming Supreme Court
Bldg
Cheyenne, WY 82002

Debra Cornia
Appellate Counsel
Public Defender's Office
225 9th St.
Evanston, WY 82930

/s/ Monica A. Sharum
MONICA SHARUM

IN THE DISTRICT COURT
SEVENTH JUDICIAL DISTRICT
CRIMINAL ACTION NO. 12880

THE STATE OF WYOMING,)
PLAINTIFF,)
VS.)
SANDRA HOUGHTON,)
DEFENDANT.)

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS
(Filed Mar. 26, 1996)

COMES NOW, Sandra Houghton, the above-named Defendant, by and through, Monica Sharum, Assistant Public Defender, and respectfully moves this court for leave to proceed on appeal in forma pauperis, pursuant to Rule 10.6, of the W.R.A.P. The Defendant seeks leave to proceed in forma pauperis as to all costs and fees of the appeal, including attorney's fees, court costs, and the costs of the record and transcript on appeal.

DATED this 26 day of March, 1996.

/s/ Monica A. Sharum
MONICA SHARUM

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 27 day of March, 1996 a true and correct copy of the foregoing to be served upon the following by depositing the same in the U.S. Mail, postage prepaid addressed as follows:

District Attorney's office
200 N. Center, Suite 300
Casper, WY 82601

State Public Defender
2020 Carey Ave, 3rd floor
Cheyenne, WY 82001

Joseph P. Meyer
Attorney General
123 Capitol Bldg
Cheyenne, WY 82002

/s/ Monica A. Sharum
MONICA SHARUM

IN THE DISTRICT COURT
SEVENTH JUDICIAL DISTRICT
CRIMINAL ACTION NO. 12880

THE STATE OF WYOMING,)
PLAINTIFF,)
VS.)
SANDRA HOUGHTON,)
DEFENDANT.)

ORDER GRANTING LEAVE TO PROCEED IN FORMA PAUPERIS
(Filed Mar. 26, 1996)

THIS MATTER having come before this Court on the Defendant's Motion to Proceed on Appeal in Forma Pauperis; the Court being duly apprised in the premises FINDS:

IT IS HEREBY ORDERED that the Defendant be allowed to proceed on appeal in forma pauperis, as to all costs and fees associated with the appeal, including attorney's fees, court costs of the record and transcript on appeal.

DATED this 26th day of March, 1996.

/s/ Dan Spangler
DISTRICT COURT JUDGE